Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 14 MARCH 12, 1980 No. 11

This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 80–76)

Bonds

Approval and discontinuance of bonds on Customs form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations

Bonds on Customs form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol D indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. PB refers to a previous bond, dated as represented by the figures in parentheses immediately following which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: February 20, 1980.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
J. H. Baxter & Co., Inc., 120 Montgomery St., San Francisco, CA; St. Paul Fire & Marine Ins. Co. D 1/7/80	Mar. 19, 1965	Mar. 19, 1965	Seattle, WA; $10,000
Boxline Shipping Co., Ltd., 17 Battery Place, New York, NY; Old Republic Ins. Co.	Jan. 11, 1980	Jan. 11, 1980	New York Seaport; $10,000
Cadbury Schweppes U.S.A., Inc., and its w/o/s Schweppes USA Ltd., Jefferson Bottling Co., Inc. and Peter Paul Cadbury Inc., 1200 High Ridge Rd., Stamford, CT; Old Republic Ins. Co.	Jan. 23, 1980	Jan. 28, 1980	New York Seaport; $10,000
Cargo-Ships & Containers Agency Ltd., 618 Second Ave, Seattle, WA; Washington International Ins. Co. D 12/11/79	Jan. 4, 1978	Jan. 4, 1978	Seattle, WA; $10,000

Footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Edward R. Comber, Jr., P.O. Box 217, Jackman, ME; Hartford Accident & Indemnity Co. D 12/31/79	Aug. 7, 1964	Aug. 14, 1964	Portland, ME; $10,000
Fritz Maritime Agencies, 142 Sansome St., Suite 400, San Francisco. CA; Old Republic Insurance Co. D 1/10/80	Jan. 10, 1979	Jan. 10, 1979	San Francisco, CA; $10,000
The Goodyear Tire and Rubber Co., (An OH Corp.), 1144 East Market St., Akron, OH; Federal Ins. Co.	Aug. 18, 1976	Feb. 11, 1977	Norfolk, VA; $10,000
House of Windsor, Inc., 100 W. Putnam Ave., Greenwich, CT; Federal Insurance Co.	Nov. 20, 1979	Nov. 27, 1979	New York Seaport; $10,000
Long Manfacturing N.C., Inc., 1907 N. Main St., Tarboro, NC; Investors Insurance Co. of America	Dec. 12, 1979	Dec. 18, 1979	Wilmington, NC; $10,000
Luigi Serra Inc., 21 West St., New York, NY; American Motorists Insurance Co.	Dec. 21, 1979	Dec. 21, 1979	New York Seaport; $10,000
E. P. Melanson Ltd., Cocagne, New Brunswick, Canada; Maine Bonding & Casualty Co. D 1/31/80	Nov. 22, 1967	Nov. 22, 1967	Portland, ME; $10,000
National Can Puerto Rico, Inc., Box 185, Catano, PR; Puerto Rican American Insurance Co.	Nov. 14, 1979	Nov. 27, 1979	San Juan, PR; $10,000
Puerto Rican Cement Co., Chase Manhattan Bldg., Hato Rey, PR; New Hampshire Insurance Co. (PB 11/21/78) D 10/30/79 [1]	Oct. 31, 1979	Oct. 31, 1979	San Juan, PR; $10,000
Refrigeration Equipment Co., Inc., 1606 Carondelet St., New Orleans, LA; St. Paul Fire & Marine Insurance Co.	Dec. 14, 1979	Dec. 19, 1979	New Orleans, LA; $10,000
Rhone-Poulenc Inc., 125 Black Horse Lane, Branswick, NJ; Old Republic Insurance Co. (PB 3/1/78) D 11/27/79 [2]	Nov. 27, 1979	Nov. 28, 1979	New York Seaport; $20,000
Roberts Tilston Group Inc., and its w/o/s Roberts Steamship Agency Inc. and Tilston Roberts Corp., Inc., 17 Battery Place, New York, NY; American Motorists Insurance Co.	Dec. 31, 1979	Dec. 31, 1979	New York Seaport; $10,000
Rothesay Paper Corp., Brunswick House, Saint John, New Brunswick, Canada; Maine Bonding & Casalty Co. D 1/31/80	Oct. 10, 1972	Mar. 20, 1973	Portland, ME; $10,000
Sea Islands Transport, Inc., (A U.S. Virgin Islands Corp.), P.O. Box 7667, St. Thomas, Virgin Islands; U.S. Fidelity and Guaranty Co. D 11/9/79	Jan. 1, 1979	Feb. 7, 1979	San Juan, PR; $10,000
Searle Medical Products USA Inc., and its Div. Matheson Gas, 932 Patterson Plank Rd., E. Rutherford, NJ; Old Republic Insurance Co.	Jan. 15, 1980	Jan. 16, 1980	New York Seaport; $15,000

Footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Shinko Bokei Co., Ltd., 3-14 Udagawa-cho, Shibuya-ku, Tokyo, Japan; American Motorists Insurance Co.	Jan. 14, 1980	Jan. 14, 1980	New York Seaport: $10,000
Source Production & Equipment Co., Inc., 625 Oxley St., Kenner, LA; St. Paul Fire & Marine Ins. Co.	Jan. 23, 1980	Jan. 28, 1980	New Orleans, LA; $10,000
Timex Corp., Waterbury, CT; Federal Ins. Co.	Nov. 2, 1979	Dec. 17, 1979	Boston, MA; $10,000
G. P. Toomey & Associates Inc., 1201 Corbin St., Elizabeth, NJ: American Motorists Insurance Co. D 2/4/80	Dec. 18, 1978	Dec. 19, 1978	New York Seaport: $10,000
Trafpak U.S.A. Inc., 2000 West Loop South, Suite 1800, Houston, TX; Old Republic Ins. Co.	Jan. 23, 1980	Jan. 28, 1980	New York Seaport: $10,000
Trans Asia Marine Corp., 60 Broad St., New York, NY; Federal Ins. Co.	Dec. 21, 1979	Dec. 21, 1979	New York Seaport; $10,000
Transmarine Navigation Corp., 1000 Wilshire Blvd., Los Angeles, CA; St. Paul Fire & Marine Ins. Co. D 11/26/79	June 9, 1977	June 10, 1977	Los Angeles, CA: $50,000

[1] Surety in Puerto Rican American Insurance Co.
[2] Principal is Rhodia, Inc. Surety is Peerless Ins. Co.

BON-3-10

DONALD W. LEWIS,
Director,
Office of Regulations and Rulings.

U.S. Customs Service

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: February 22, 1948.

SALVATORE E. CARAMAGNO
(For the Director, Office of
Regulations and Rulings).

(C.S.D. 80-31)

Marking: Partially Obscured Country-of-Origin Marking Label on Clock Movement

Date: July 10, 1979
File: MAR 2-05 R:E:E
710611 MC

This ruling concerns the sufficiency of marking a clock movement with an encapsulated label.

Issue.—Whether a partially obscured marking in which all of the required information is ultimately legible is "conspicuous" enough to comply with clock movement marking requirements.

Whether a label, permanently encapuslated by transparent colloid, complies with marking requirements for clock movements.

Facts.—The submitted clock movement is a 17/16-inch long by 3/8-inch wide printed circuit board. A silver label, almost as wide as the board itself, contains the words "unadjusted, no jewels, made in Taiwan" and the name of the manufacturer. The label and the board have been covered with transparent colloid, permanently, encapsulating the movement and marking label. A component, attached above the label partially obscures the words, "unadjusted, no jewels" but they are not illegible.

Law and analysis.—Schedule 7, part 2, subpart E, headnote 4, TSUS, requires that movements be "conspicuously * * * marked." The

presence of the label itself on the face of the movement is conspicuous. Although the entire label is not easily readable at first glance, the words "Made in Taiwan" and the presence of other words are obvious. The ultimate purchaser, the watchmaker, should not encounter difficulty determining what is printed. All of the required information that the watchmaker would expect to see appears on the label. The nature of the movement is such that some obstruction is inevitable; the method employed allows the marking to be legible.

Schedule 7, part 2, subpart E, headnote 4, TSUS, also requires that movements be "indelibly marked by cutting, die-sinking, engraving, or stamping." While another marking method was employed, the encapsulated label is as indelible as possible. Cutting, die-sinking, engraving, or stamping of the movement would not be as effective as the process achieved here. The purpose of a permanent, legible marking has been satisfied.

Holding.—A partially obscured but legible marking sufficiently complies with marking requirements when some obstruction is unavoidable due to the nature of the item.

An indelible marking of a clock movement by means of an encapsulated label sufficiently complies with the marking requirements.

(C.S.D. 80–32)

Marking: Conspicuous Country-of-Origin Marking of Household Paring Knife

Date: July 10, 1979
File: MAR 2–05 R:E:E
710683 MC

This ruling concerns the contry-of-origin marking on the unexposed side of a knife blade.

Issue.—Whether knives are conspicuously marked as to country of origin when, in their retail containers (sheaths), the marked side of the blade is covered while the unmarked side can be seen through the transparant plastic panel of the sheath.

Facts.—The knife in question is a household paring knife with a wood-like handle. The blade is covered by a plastic sheath which on one side consists of clear plastic, while the other is a solid brown color through which the blade cannot be seen. On the visible side of the blade appear the company name, the model number, the words "super stainless steel" and the figure of a soldier's head. The word "Japan" is die sunk on the side of the blade which cannot be seen through the sheath.

Law and analysis.—Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that all articles imported into the United States be legibly, conspicuously, and permanently marked with the English name of the country of origin. Knives, in particular, are required by section 134.43 of the Customs Regulations to be individually "marked legibly and conspicuously by die stamping, cast-in-the-mold lettering, etching (acid or electrolytic), engraving, or by means of metal plates."

The submitted knife is legibly and permanently marked with the country of origin by die stamping. Only by removing the sheath does the marking become visible. But once the sheath is removed for examination of the blade, the marking is conspicuous.

We are of the opinion that the marking method employed sufficiently complies with the requirements of section 134.43. The ultimate purchaser of the knife would normally remove the blade from the sheath to examine it for sharpness or quality. Upon casual examination of the knife, the word "Japan" is obvious.

The presence of the sheath may be construed as a possible attempt to conceal the country-of-origin marking. However, the plastic does serve a useful purpose as it protects the handler of the knife from the blade; the use of colored plastic on one side insures that the sheath is visible. Intent of the manufacturer is irrelevant anyway as we believe that the ultimate purchaser would uncover the blade and see the marking prior to purchase.

Holding.—Marking a knife with the country of origin on an unexposed side of the blade complies with section 134.43, where the covering sheath would normally be removed prior to purchase.

(C.S.D. 80-33)

Carrier Control: Repair Parts For Containers; Coastwise Laws; 46 U.S.C. 883

Date: July 11, 1979
File: VES-3-17-R:CD:C
104016 JL

This ruling concerns the carriage of repair parts for containers and chassis by foreign-flag vessels between U.S. ports.

Issue.—Whether repair parts for chassis and containers fall within the term "equipment for use with cargo vans, lift vans, or shipping tanks" in the sixth proviso of 46 U.S.C. 883.

Facts.—A British steamship company desires to transport repair parts, such as tires and panels, for containers and chassis used in

international trade in its ships between U.S. ports. It is stated that all of the repair parts proposed to be shipped will be used specifically for the repair of containers used in international traffic.

Law and analysis.—The sixth proviso to 46 U.S.C. 883 provides in relevant part as follows:

> *Provided further*, that upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, * * * this section shall not apply to the transportation by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, of (a) empty cargo vans, empty lift vans, and empty shipping tanks, (b) equipment for use with cargo vans, lift vans, or shipping tanks * * *.

The overrriding consideration in the interpretation of all statutes has been to so interpret them as to carry out their legislative intent. *United States* v. *Oregon*, etc., 164 U.S. 526, 539; *Hawaii* v. *Nankichi*, 190 U.S. 197, 213; *United States* v. *Katz*, 271 U.S. 354.

The Treasury Department's comments on the bill which became Public Law 90–474 and, among other things, added clauses (b) through (d) to the proviso, said in part:

> The Department interprets the words "equipment" in line 4, page 2, of the bill to mean equipment designed for use with cargo vans, lift vans, or shipping tanks, including but not limited to running gear (for example, single axle and tandem bogies , adaptor frames, and chassis), and understands the intent of the bill to be that such equipment may be transported coastwise by a non-entitled vessel without regard to whether it is affixed to or accompanies the vans or tanks.

See 2 U.S. Cong. & Admin. News 68, page 3187.

In considering the statute, 46 U.S.C. 883, we note that it is a protective statute and therefore should be construed strictly in favor of the interest to be protected. Further, we consider the statute to be clear and unambiguous and observe that "repair parts" are nowhere provided for therein. Also, the Senate report to S. 1485 stated in the background portion that:

> The Bureau of Customs has held that the language of Public Law 89–194 insofar as it relates to "empty cargo vans, empty lift vans, and empty shipping tanks" is not sufficiently broad to embrace running gear related to such containers unless such gear is, in fact, affixed thereto * * *.

Based on the above, we interpret the sixth proviso of 46 U.S.C. 883 as not encompassing the coastwise movement of repair parts of containers, cargo vans, lift vans, shipping tanks, etc., but instead consider that "equipment" as it is used in said proviso relates to accessories of said articles.

313-580 O - 80 - 2

Holding.—Repair parts of containers may not be transported by noncoastwise qualified vessels between U.S. ports without incurring the penalties provided for in 46 U.S.C. 883.

Effect on other holdings.—Headquarters decision 103639 amplified.

(C.S.D. 80–34)

Generalized System of Preferences: Substantial Transformation of Constituent Chemical Materials; 35 Percent Value-Added Requirement

Date: July 12, 1979
File: R:CV:S
055716/055717 JLV

This ruling concerns the processing of NPR–2 into Naproxen which results in an intermediate product which is a material produced in a beneficiary developing country (BDC) for purposes of the Generalized system of preferences (GSP).

Issue.—Does the processing of NPR–2 into the intermediate potassium salt of Naproxen result in a new and different article of commerce which, when processed to make Naproxen, is a constituent material produced in the Bahamas within the meaning of section 503(b)(2)(A)(i) of the Trade Act of 1974 and section 10.177(a)(2) of the Customs Regulations (19 CFR 10.177(a)(2))? Is the mixing of Naproxen with a starch excipient a substantial transformation resulting in a new and different article of commerce for purposes of the GSP?

Facts.—NPR–2 is produced in the United States by resolving the isomeric mixture of dextrorotatory and levorotatory Naproxen (d,l—acid) with cinchonidine. The NPR–2 (cinchonidine menapropionate) is a complex of the active d-isomer and the resolving agent. This product is then exported to the Bahamas for processing into Naproxen ((+)-6-methoxy-α–methyl-2-naphthaleneacetic acid).

The NPR–2 is reacted in the Bahamas with potassium hydroxide to form the potassium salt of Naproxen. In this chemical reaction the resolving agent, cinchonidine, is recovered from the NPR–2 complex and is returned to the United States for recycling. The potassium salt of Naproxen is then reacted with hydrochloric acid to yield crude Naproxen and potassium chloride. Isolation of the crude Naproxen from the solution is achieved by precipitating with water and centrifugation.

The crude Naproxen, known as a "wet-cake," is then dissolved in acetone and treated with activated carbon to remove discoloration. After the carbon is filtered off, the acetone volume is reduced by

distillation. By adding water to the solution the pure Naproxen is precipitated. It is then dried and milled to a fine white powder.

It is proposed to export either the Naproxen in the pure form or to further process the Naproxen by mixing with a starch excipient and then to export the Naproxen-starch mixture. Mixing with starch is one of several stages during the tableting process. Final mixing with additional excipients and tableting would take place in the United States.

Naproxen is not an article eligbible for duty-free treatment under the GSP. However, this ruling is requested for the purpose of future action in which GSP eligibility will be requested for the product.

Law and analysis.—In order to qualify for duty-free entry under the GSP, an eligible article must satisfy certain requirements. One of these is the 35 percent value-added requirement established by section 503(b)(2)(A) of the Trade Act of 1974. That provision requires that the sum of (1) the cost or value of the materials produced in the BDC plus (2) the direct costs of processing operations performed in such BDC must not be less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States. Materials "produced in a BDC" are defined in section 10.177 (a) of the Customs Regulations as constituent materials of the eligible article which are either (1) wholly the growth, product, or manufacture of the BDC or (2) substantially transformed in the BDC into a new and different article of commerce.

In this case, the basic materials used in the production of Naproxen are imported into the Bahamas. Therefore, the cost or value of such materials may not be included in the 35-percent requirement for Naproxen unless the imported materials are substantially transformed into intermediate products which are new articles of commerce distinct from the chemical precursors and from the eligible article into which the intermediates are subsequently processed.

The chemical reaction of the NPR–2 complex with potassium hydroxide forms a potassium salt of Naproxen. This product is an intermediate in the production of Naproxen and is a compound which is chemically distinct from the precursors NPR–2 and potassium hydroxide. Potassium salt of Naproxen is not isolated and marketed in that form. However, the sodium salt of Naproxen is marketed in several foreign countries for specific medicinal purposes. The functional equivalency of both salts of Naproxen appears to be chemically correct. The manufacturer of the sodium salt of Naproxen indicates that the sodium form was chosen for market because of reasons which were other than medicinal reasons.

The sodium salt of Naproxen is an analgesic with selective anti-inflammatory and anti-pyretic functions. Analgesics marketed by

other companies are sold in either the sodium or potassium salt forms without significant difference in the therapeutic value of the medicines. The distinction between the sodium and the potassium salts of Naproxen appears to be only in the presence of a sodium or potassium element. They apparently are otherwise medicinally interchangeable. In view of this fact, the intermediate produced in the formation of Naproxen is a chemical which is of the same general class or kind as the sodium salt of Naproxen. Therefore, the potassium salt of Naproxen, distinct from its precursors, is a new and different article of commerce. If this intermediate product is subsequently used in the production of a new article, then it would be a constituent material produced in a BDC within the meaning of section 10.177(a)(2) of the Customs Regulations.

The potassium salt is chemically reacted with hydrochloric acid to produce the acid Naproxen which is then precipitated out as crude Naproxen. The subsequent processing of the crude Naproxen is a purifying process to remove discoloration. The "pure" Naproxen is an analgesic similar in therapeutic value to the sodium salt of Naproxen. There is an overlap in their respective analgesic functions. However, they are not to be used interchangeably and are not marketed as interchangeable. The sodium salt form has different characteristics and uses which are attributed to a different rate of absorption. Such differences would also exist between the potassium salt form and the acid form of Naproxen. Therefore, the production of Naproxen from the potassium salt of Naproxen results in a new and different article of commerce for purposes of the GSP. The potassium salt of Naproxen is a constituent material of Naproxen and its cost or value would therefore be includable in the 35-percent value-added requirement for Naproxen.

The further processing of the "pure" Naproxen into a mixture of Naproxen and starch is not a processing operation which results in a new and different article of commerce. This is merely a dilution process and is a preliminary step in the tableting process. The product is still Naproxen, whether in "pure" form or in a fixed ratio with starch.

Holdings.—(1) The processing of NPR–2 into the intermediate potassium salt of Naproxen results in a new and different article of commerce which, if used in the production of Naproxen, is a constituent material produced in the Bahamas within the meaning of the law and regulations under the GSP.

(2) The mixing of Naproxen with a starch excipient does not result in a substantial transformation of the Naproxen into a new and different article of commerce for purposes of the GSP.

(C.S.D. 80–35)

Bonds: Unfair Methods of Competition and Unfair Trade Practices; Amount of Bond Prescribed by 19 U.S.C. 1337 (e) and (g)(3) Determined by ITC

Date: July 13, 1979
File: BON–3–R:CD:D JB 209852

Issue.—When a special bond is required for temporary entry, under provisions of 19 U.S.C. 1337(e) and 19 U.S.C. 1337(g)(3) who shall determine the value of the bond?

Facts.—The statute states that the bond shall be "determined by the Commission and prescribed by the Secretary." 19 U.S.C. 1337(e), Public Law 93–618, title III, section 341(a). The Commission referred to is the International Trade Commission (ITC). The Secretary is the Secretary of the Treasury. Identical language is repeated in 19 U.S.C. 1337(g)(3). ITC rules adopted pursuant to the statute, 19 CFR 210.14 (3), state that the Commission will "(d)etermine the amount of bond pursuant to section 337(e) or section 337(g)(3) of the Tariff Act * * *" Customs Service Regulations, 19 CFR 12.39(b) state that the value of the bond "shall be in an amount equal to the domestic value, as ascertained by the appraising officer, * * *" In accord, 19 CFR 113.14(z).

Law and analysis.—Customs Service Regulations, 19 CFR 12.39(b) and 113.14(z) are in the process of being revised to conform with the 1975 amendments to the Tariff Act of 1930. ITC rules (19 CFR 210. 14(3)) are controlling as to determination of the value of the bond.

Holding.—When a special bond is required pursuant to 19 U.S.C. 1337(e) and 19 U.S.C. 1337(g)(3) the value of the bond shall be determined by the International Trade Commission, as detailed in 19 CFR 210.14.

(C.S.D. 80–36)

In-Bond Entries: Exposed Film Imported for Viewing and Evaluation

Date: July 13, 1979
File: CON–9–09–R:CD:D JB 210659

Issue.—Whether exposed film, intended to be imported into the United States for viewing and evaluation as to content and reproduction standards, is eligible for temporary importation under bond.

Facts.—Importer is a graphic arts company that wishes to import

exposed film into its New York office from Canada. The purpose of the entry is to enable the importer to view the film and evaluate its content and reproduction standards. The film will not be altered or processed in any manner. After viewing all film it will be exported to Canada.

Law and analysis.—All articles imported into the United States are subject to duty unless specifically exempt. One such exemption is provided for in item 864.30, Tariff Schedules of the United States (TSUS), which reads in part: "Articles intended solely for testing, experimental, or review purposes * * *" Such goods are eligible for temporary importation under bond, subject to the usual conditions of such importations, detailed in sections 10.31 to 10.40 of the Customs Regulations. (19 CFR 10.31–10.40).

The question arises whether the goods at issue here may qualify as "articles intended solely for * * * review purposes." A previous case permitted entry under 864.30 of developed film for screening and evaluation. It is understood that such film or films must be used solely for that purpose, and not diverted to other uses. This office has also permitted entry under 864.30 of films to be screened for the purpose of having them judged at a film festival. Such use is construed as "review" within the meaning of section 864.30.

In the present case the film will be imported solely for review at the offices of the importer as to content and reproduction standards. Such use falls within the purview of section 864.30, and is eligible for temporary importation under bond, subject to the usual regulations.

Holding.—Exposed film imported into the United States for review and evaluation as to content and reproduction standards is eligible for temporary importation under bond.

(C.S.D. 80–37)

Bonds Evidence of Authority to Act by Officer of Corporate Surety

Date: July 17, 1979
File: BON–3–R:CD:D MR 209861

Issue.—What evidence of authority to act is required when an authorized officer of a corporate surety executes a Customs bond?

Facts.—A general term bond (Customs form 7595) executed by a surety company was signed by the assistant secretary of the corporation. No power of attorney had been filed for the assistant secretary authorizing him to act on behalf of the corporation.

Law and analysis.—While section 113.34(c), Customs Regulations

(19 CFR 113.34(c)), clearly sets forth the type of evidence of authority to act which is required when an authorized officer of a corporate principal executes a bond, there is no corresponding section dealing with corporate sureties. Section 113.37(d), Customs Regulations (19 CFR 113.37(d)), says, "A bond executed by a corporate surety shall be signed by an authorized officer or attorney of the corporation . . ." Section 113.37(f) outlines the procedure for executing and filing a power of attorney for the agent or attorney of a corporate surety, but it makes no mention of the evidence of authority required when an officer of the corporate surety executes the bond.

In general, no corporate officer has inherent power to do any act on behalf of a corporation unless authorized to do so. For example, there are many cases in which a secretary of a private corporation has been held not to have implied power to bind the corporation by a contract in its name. (19 Am. Jur. 2d. 604). A person dealing with an officer of a corporation is under a duty to use "reasonable diligence and prudence" in determining whether the officer is acting within the scope of his powers. (19 Am. Jur. 2nd 592.) Therefore, Customs must require some evidence that the officer executing a Customs bond on behalf of a corporate surety has authority to bind that corporation.

A power of attorney for the corporate officer, executed and filed in the manner specified in 19 CFR 113.37(f), would clearly constitute sufficient evidence of authority to execute the bond. Alternatively, a certificate similar to the "certificate as to corporate principal", provided for in 19 CFR 113.34(c)(1), may be executed and submitted with the bond in lieu of a power of attorney. Finally, the corporate surety may instead attach to the bond, in lieu of the certificate, evidence outlined in 19 CFR 113.34(c)(2)(iii–iv), namely a copy of the document authorizing such officer to sign such bond, certified by the secretary of the corporation under the corporate seal, together with a document verifying the signature of the officer properly attested under the corporate seal. So long as such a certificate or evidence in lieu thereof is submitted with each bond, there would be no need to have a power of attorney for a corporate officer sent to the Customs Data Center and listed on its computer printout of corporate powers of attorney; nor would there be a need for each port to keep a record of corporate officers authorized to execute Customs bonds at that port.

Holding.—When an authorized officer of a corporate surety executes a Customs bond, either a power of attorney authorizing him to execute the bond on behalf of the corporate surety must be on file under the provisions of 19 CFR 113.37(f), or a certificate or evidence in lieu thereof equivalent to that required of a corporate principal under 19 CFR 113.34(c)(1) and 19 CFR 113.34(c)(2)(iii–iv), respectively, must be submitted with the bond.

(C.S.D. 80-38)

Country of Origin: Unmarked Dinnerware in Marked Cartons To Be Used by Airline for Inflight Meals

Date: July 17, 1979
File: MAR-2-01-R:E:E
710493 HS

This ruling concerns country-of-origin marking on dinnerware that will be sold to an airline for inflight usage by passengers.

Issue.—Whether the marking of containers is sufficient for dinnerware that will be imported expressly and exclusively for sale to a company that will exclusively resell the merchandise in its original cartons to an airline company that will use the dinnerware to serve passengers inflight.

Facts.—Dinnerware is manufactured in Japan. The dinnerware is to be imported by the importer expressly and exclusively for sale to another company. Pursuant to an exclusive national contract, this company will resell the dinnerware to an airline company which will use the dinnerware for inflight meals served to passengers.

The dinnerware will be forwarded to the airline company in the original unopened shipping cartons. Only in the event of breakage are the cartons to be opened prior to delivery. The cartons will be marked with the country of origin of the dinnerware.

Law and analysis.—Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides in general that all articles of foreign origin imported into the United States must legibly and conspicuously be marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

There are, however, certain exceptions to the general rule. Among the exceptions are section 304(a) (3) (D) which provides that articles for which the marking of the containers will reasonably indicate the origin of the articles need not be marked.

For this exception to be granted, the articles must reach the ultimate purchaser in a properly marked container and the container must reach the ultimate purchaser unopened.

Section 134.1, Customs Regulations, defines ultimate purchaser as generally the last person in the United States who will receive the article in the form in which it was imported. Ultimate purchaser does not necessarily mean the ultimate user or consumer of an article.

Although the airline company, in this case, will distribute the dinnerware in-flight for use by passengers, the passengers will not keep the dinnerware, but will return it to the airline company after usage. The passengers, therefore, are clearly not the ultimate purchasers

even though they are the ultimate users. The airline company is the ultimate purchaser of the dinnerware.

While the dinnerware will be sold and resold before reaching the airline company, with the importer selling it to another company who will resell it to the airline company, the airline company will receive the dinnerware in the original unopened shipping cartons bearing the country-of-origin marking, barring breakage.

The purpose of the marking requirements is to enable the ultimate purchaser to decide whether to buy goods with knowledge of the goods country of origin. As the airline company, the ultimate purchaser, will have knowledge of the country of origin of the dinnerware by receiving the dinnerware in original unopened cartons properly marked with the dinnerwares' country of origin, the purpose of the marking requirements will be met. Accordingly, the dinnerware need not individually be marked.

Holding.—Dinnerware need not be individually marked it if will be imported expressly and exclusively for sale to a company that will exclusively resell the merchandise to an airline company that will use the dinnerware to serve passengers in-flight, provided the dinnerware is delivered to the airline company in the original unopened shipping cartons and the cartons are properly marked with the country of origin of the dinnerware.

(C.S.D. 80–39)

Prohibited and Restricted Importations: Merchandise of Foreign Manufacture Bearing an American Trademark; Doctrine of Foreign Equivalents

Date: July 17, 1979
File: TMK–3–R:E:E
709616/709710 SO

This ruling concerns the applicability of the prohibition set forth in section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526), against the importation into the United States of merchandise of foreign manufacture bearing an American trademark.

Issue.—Would the importation of soles and heels for shoes bearing the mark "Amazonas" infringe upon the rights of the owner of the registered trademark "Amazon" for soles, half-soles, and flexible taps for shoes.

Facts.—Shipments of rubber soles and heels for shoes have arrived at New York (seaport) from Brazil bearing the mark "Amazonas." The attorney for the trademark owner and Customs officers at New York are both seeking a ruling as to whether these shipments infringe

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upon the rights of the American trademark owner who has recorded its registered trademark "Amazon" with Customs for import protection. The trademark registration is for soles, half-soles, and flexible taps for shoes.

Law and analysis.—Section 526 of the Tariff Act of 1930, as amended, (19 U.S.C. 1526) prohibits the importation into the United States of any merchandise of foreign manufacture bearing a trademark owned by a corporation created or organized within the United States, provided, a copy of such trademark registration is filed with the Secretary of the Treasury and recorded in the manner provided by regulations (19 CFR 133.1–133.7). Any such merchandise bearing a counterfeit mark, within the meaning of section 45 of the act of July 5, 1946 (commonly referred to as the Lanaham Act, 60 Stat. 427; 15 U.S.C. 1127), imported in violation of the provisions of section 42 of the act of July 5, 1946 (15 U.S.C. 1124), shall be seized, and, in the absence of written consent of the trademark owner, forfeited for violations of the Customs laws.

The term "counterfeit" is defined in the law (15 U.S.C. 1127) as a spurious mark which is identical with, or substantially indistinguishable from, a registered mark. Since the mark "Amazonas" is not identical to "Amazon" (except in meaning when translated into English) it is not considered to be a "counterfeit" mark within the definition cited above, and future shipments would not be subject to the procedures set forth in 19 U.S.C. 1526(e) for notice to the trademark owner and seizure and forefeiture to the Government in the absence of written consent of the trademark owner to an alternative disposition.

Infringment of federally registered marks if governed by the test of whether defendant's use is likely to cause confusion, or to cause mistake, or to deceive. It has been noted that the word "Amazonas," when translated into English from the Portuguese, means "Amazon." Under the doctrine of "foreign equivalents," foreign words from common languages are translated into English to determine their confusing similarity to English word marks. The test is whether, to those American buyers familiar with the foreign language, the word would denote its English equivalent. The rationale of this rule is that a foreign word familiar to an appreciable segment of American purchasers may be confusingly similar to its English equivalent, or vice versa. If the foreign word mark is from a modern language and uses simple words translatable by many people, then the meaning of the mark may indeed be confusingly similar to an English word mark having a similar meaning. In this case, it is clear that the two marks, the Portuguese "Amazonas" and the English translation "Amazon," are similar enough to cause confusion, and that the

"Amazon" mark would be infringed by the sale of soles and heels bearing the "Amazonas" mark.

It is now well settled in this country that a trademark protects the owner against not only its use upon the articles to which he has applied it, but upon such other goods as might naturally be supposed to come from him. There is indeed a limit. The goods on which the supposed infringer puts the mark may be too remote from any that the owner would be likely to make or sell. But no such difficulty arises here. It is a matter of common knowledge that heels are likely to be manufactured by the same company that manufactures soles, half-soles, and flexible taps for shoes.

Holding.—We are of the opinion that this case should be decided under the doctrine of "foreign equivalents," and therefore, there is a strong likelihood of confusion. Accordingly, entry of imported soles and heels bearing the mark "Amazonas" would be prohibited as infringing on the registered trademark "Amazon." Importations of infringing merchandise should be detained pursuant to section 133.22 of the Customs Regulations (19 CFR 133.22). Articles detained in accordance with section 133.22 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark restrictions set forth in section 133.21(c) are established.

(C.S.D. 80–40)

Collections and Refunds: Whether Duties on Chinese Elm Seedlings Destroyed Under State Law Are Refundable

Date: July 17, 1979
File: ENT–1–01 R:E:E
306418 MK

This ruling reviews a protest against a district director's refusal to refund the duties paid on merchandise destroyed pursuant to a state law.

Facts.—A shipment of Chinese Elm seedlings was imported and duties were paid. Subsequent to release from Customs custody, a State government agency found the trees to be not virus free. The trees were destroyed, under supervision of the State government agency, pursuant to State law.

Issue.—Is a refund of duties authorized?

Law and analysis.—The importer's protest is based upon 19 U.S.C. 1558(a)(2) and 19 CFR 158.41. The law in question provides, in pertinent part, for a refund of duties, " * * * When prohibited articles

have been regularly entered in good faith and are subsequently exported or destroyed pursuant to a *law of the United States* and under such regulations as the Secretary of the Treasury may prescribe." [Italic added.]

Section 158.41 of the Customs Regulations provides that:

> Merchandise regularly entered or withdrawn for consumption in good faith and denied admission into the United States by any Government agency after its release from Customs custody * * * may be destroyed under Government supervision.

The importer contends that these provisions entitle him to a refund of duties because the merchandise was destroyed under the supervision of a government employee of the State of Michigan, pursuant to a law of that State.

We do not interpret the cited provision of law and regulation as applying to merchandise prohibited or destroyed pursuant to a State law.

A "law of the United States" is a Federal law. Furthermore, under the importer's reasoning, the Secretary of the Treasury would be empowered to prescribe regulations under which State governments should export or destroy prohibited merchandise. The Secretary does not have the jurisdiction to prescribe how State employees do their jobs.

We therefore, conclude that the "Government agency" and the "Government supervision" referred to in section 158.41 of the regulations can, logically and legally, only refer to the Federal Government.

Holding.—Merchandise prohibited by State law does not come within the provisions of 19 U.S.C. 1558(a)(2). The protest is therefore denied in full.

(C.S.D. 80–41)

Commercial Mail Importations: Collection of State Taxes on Importation of U.S.-Made Cigarettes

Date: July 17, 1979
File: RES–2–26 R:E:E
709654 SO

This ruling concerns the role of the U.S. Customs Service in the collection of taxes due a State tobacco tax administrator pursuant to the Jenkins Act (15 U.S.C. 376) upon shipment by mail of U.S.-made cigarettes in small quantities (1,000–2,000 cigarettes) from the British Virgin Islands to individual purchasers in the United States.

Issue.—Would a corporation planning to engage in the business of shipping small quantities of U.S.-made cigarettes by mail from the

British Virgin Islands to individual purchasers in the United States be required by the U.S. Customs Service to report such shipments to the State tobacco tax administrators of the States to which the cigarettes are shipped.

Facts.—A foreign shipper is planning to export small quantities of U.S.-made cigarettes by mail from the British Virgin Islands to individual U.S. consumers for their personal use. The shipper seeks a ruling as to whether or not the Jenkins Act (19 U.S.C. 376) requires that these shipments be reported to the State tobacco tax administrators of the States to which the cigarettes are shipped and what role the U.S. Customs Service would play in the enforcement of the reporting requirements of the Jenkins Act. The shipper is of the opinion that the term "interstate commerce" as used in the Jenkins Act would not include the shipments described above.

Law and analysis.—In general, the Jenkins Act provides that any person who sells or otherwise disposes of cigarettes for profit in interstate commerce (where shipment is made to other than a distributor licensed by or located in a State taxing the sale or use of cigarettes) must provide the tax administrator, in the State where the shipment is made, necessary data upon which to base assessment and collection of the State cigarette tax. The legislative history of the Jenkins Act indicates that the law was enacted to prevent the avoidance of State's sale and use taxes on cigarettes by interstate shipment to consumers in States taxing cigarettes, particularly where the U.S. mails are used to accomplish the avoidance. The shipments are for the most part by parcel post because the light weight and small bulk of the articles, relative to their value, make this an inexpensive method of interstate transportation.

The constitutionality of the Jenkins Act was upheld in the case of *Consumer Mail Order Ass'n of America* v. *McGrath*, D.C.D.C. 1950, 94 F. Supp. 705, affirmed 71 S. Ct. 500, 340 U.S. 925, 95 L. Ed. 668, rehearing denied 71 S. Ct. 611, 341 U.S. 906, 95 L. Ed. 1344. Furthermore, it was held in the case of *United States* v. *E. A. Goodyear, Inc.*, 344 F. Supp. 1096 (1971) that:

> The requirement of furnishing information to State tobacco tax administrators is a reasonable one. At present, every State taxes the sale and/or use of cigarettes, but the amount of tax differs from State to State. There are those in high-tax States who seek to avoid the burden of such taxes by importing cigarettes which are shipped through the mail to them by defendants. Indeed, it would seem impossible to collect taxes on interstate sales of cigarettes through the mails were it not for the Jenkins Act or other reporting requirements.

Holding.—We are of the opinion that sales of cigarettes through the mails in interstate commerce as outlined in your proposal would be

reportable to the State tobacco tax administrator pursuant to the terms of the Jenkins Act. We understand that the practice in the Miami customs district is that shipments of cigarettes by mail into the United States are detained until the importer provides satisfactory evidence that the secretary of the State of Florida has been notified. We would recommend that all ports of entry adopt the Miami practice of requiring evidence of notification of the appropriate State tobacco tax administrator before releasing small shipments of cigarettes to individual purchasers.

We are of the opinion that Customs enforcement of the Jenkins Act in the manner prescribed above is authorized by title 18, section 545 of the United States Code, which provides criminal penalties for persons who knowingly import or bring into the United States any merchandise contrary to law. It was held, in the case of *U.S.* v. *Claybourne*, D.C. Cal. 1960, 180 F. Supp. 448, that the purpose of this section proscribing smuggling or clandestinely introducing merchandise into the United States which should have been invoiced, and knowingly importing or bringing into the United States merchandise contrary to law, without complying with other provisions of law, is to prevent the surreptitious, clandestine, or fraudulent entry of goods into the United States. In order to provide uniformity of treatment by the U.S. Customs Service, a copy of the decision is being circulated to all Customs officers.

(C.S.D. 80–42)

Prohibited and Restricted Importations: Manufacturing Clause of the 1976 U.S. Copyright Law (17 U.S.C. 1601(a))

Date: July 17, 1979
File: CPR–5–R:E:E
709805 MC

This ruling concerns the possible restrictions and prohibitions of the 1976 U.S. Copyright Law applicable to the importation of the book, "Michelangelo, Painter, Sculptor, Architect," printed in Italy and bound in Switzerland.

Issue.—Whether the importation into the United States of the book entitled "Michelangelo, Painter, Sculptor, Architect," would be restricted or prohibited by the "manufacturing clause" of the 1976 U.S. Copyright Law (17 U.S.C. 1601(a)).

Facts.—Two shipments of the book, "Michelangelo, Painter, Sculptor, Architect," printed in Italy and bound in Switzerland, arrived in New York. Two notices of redelivery were issued with

regard to these books on the ground that their importation would violate the 1976 U.S. Copyright Law.

The book in question is an oversized work (10½ by 12½ inches), printed on heavy-coated stock with heavy covers. Its retail list price was $35 until the end of 1978 and is now $40. The same text in a black and white paperback version containing fewer photographs sells for $5.95.

The oversized version consists of 220 pages containing 180 black and white illustrations and 514 color plates. Sixty-two pages are completely textual while 103 pages are all pictorial (with some captions) and 30 pages contain both text and illustration. Several full-page color photographs of Michelangelo's greatest works are featured. Twelve pages consist of a preface, introduction, bibliography, notes, and an index.

Law and analysis.—In general, section 601(a) of the 1976 Copyright Law provides that "the importation into or public distribution in the United States of copies of work consisting preponderantly of nondramatic literary material that is in the Engish language and is protected under this title is prohibited unless the portions consisting of such material have been manufactured in the United States or Canada."

Where the work consists only partially of material protected by the manufacturing clause (i.e., copyrighted text), the test is whether the work consists "preponderantly" of the protected material. The manufacturing requirement would apply if the English language, nondramatic literary text exceeds the pictorial material in importance, even thought more pages of a book might be devoted to the pictures than the text. Both quantitative and qualitative aspects of a book must be appraised in order to determine the relative importance of the non dramatic literary material. Among the factors to be examined include the main purpose of the book, the percentage increase in the monetary value of the book with and without the pictures, and the degree to which the nonprotected material enhances the quality of the work as a whole.

In this case we are of the opinion that the pictures exceed the copyright-protected, nondramatic literary material in importance. Quantitatively, the number of predominantly pictorial pages greatly exceeds the number of pages that consist basically of text. Qualitatively, the photographs transform a history of the life and works of Michelangelo into a beautiful illustrative treasury of great art. As can be seen by comparing the $40 current price of the work with the $5.95 price of the paperback version, the size and color pictures of the work greatly enhance its value.

Holding.—The book described above, entitled "Michelangelo,

Painter, Sculptor, Architect," published in Italy and bound in Switzerland, and bearing the notice of copyright, should not be prohibited entry into the United States by the "manufacturing clause" of the 1976 U.S. Copyright Law (17 U.S.C. 1601).

We are suggesting that our New York office cancel the notices of redelivery and permit distribution of the work in question in the United States.

(C.S.D. 80-43)

Marking: Country-of-Origin Marking Requirements for Eyeglass Frame Components

Date: July 17, 1979
File: MAR-2-05-R:E:E
710338 HS

This ruling concerns the applicability of 19 U.S.C. 1304 to unfinished eyeglass frame component materials imported from Italy.

Issue.—Whether the importer substantially transforms the imported eyeglass parts, becoming the ultimate purchaser, and necessarily knows the origin of the parts.

Facts.—The importer will purchase and import directly from an Italian manufacturer plastic eyeglass frame fronts and temples. The subject frame fronts and temples will be imported in a neutral and unfinished condition.

After importation, the frame fronts and temples will be subject to processing before they are assembled and dyed. Two styles of frames will be created.

The following operations are performed on the subject fronts and temples by the importer after importation into the United States:

Temples

1. Temple hinges removed and temples ultrasonically cleaned and sorted.
2. Temples trimmed according to style specifications.
3. Temples machined to accommodate the attachment of trim.
4. Temples cleaned prior to assembly with front.
5. Temples engraved (Elasta frame only).
6. Temples trimmed further (Elasta frame only).
7. Temples subjected to five-part milling process (Elasta frame only).
8. Seven-piece hinge assembled and fixed on temple (Elasta frame only).
9. Lictite injected into hinge screws (Elasta frame only).

Frame fronts

10. Hinge holes drilled, frame composition tested, and hinges attached.

11. Frame front heated, reformed, and reshaped to assure proper meniscus curve for the lens.

12. Frame front inspected and ultrasonically cleaned.

13. Frame front and temples assembled.

14. Pantoscopic angle for frame determined.

15. Frame sterilized and dye base applied in 10-step process.

16. Frame immersed in Freon bath.

17. Frame dyed.

18. Protective gloss coating applied to frame.

19. Frame adjusted and set in accordance with fitting requirements.

20. Frame stamped with requisite optical specifications.

Sixty-one percent of petitioner's costs will be attributable to the post-import manufacturing process of one of the frame styles, and the domestic cost involved in the manufacture of the other frame style will also exceed the cost of procuring the unfinished neutral components from the foreign supplier. According to the petitioner's cost analysis, nearly 85 percent of its domestic costs will be attributable to the processes of machining, dyeing, and assembly.

Law and analysis.—Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides in general that all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to the ultimate purchaser in the United States.

There are, however, certain exceptions to the general rule. Among the exceptions are section 304(a)(3)(H) which provides that if an ultimate purchaser, by reason of the circumstances of its importation, necessarily knows the country of origin of the article, the article need not be marked to indicate its origin.

19 CFR 134.35 provides that an article used in the United States in manufacture which results in an article having a name, character, or use differing from that of the imported article, will be within the principle of the decision in the case of *United States* v. *Gibson-Thomson Co., Inc.*, 27 CCPA 267 (CAD 98). Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into the different article will be considered the "ultimate purchaser" of the imported article within the contemplation of section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)).

Generally, a manufacturer is considered an ultimate purchaser if a manufacturing process is performed on an imported item so that the item loses its identity and becomes an integral part of a new article with a new name, character, and use.

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An item might lose its identity and become an integral part of a new article by becoming functionally necessary to the new article rather than being merely decorative or accessory, or by having little or no value as an item of commerce apart from its being part of the new article. Generally, the imported article must lose its identity or independent functional significance as a result of the further manufacturing process in order to be exempted pursuant to 19 U.S.C. 1304(a) (3) (H).

In this case, the frames and temples cannot be used in their imported condition except by the producer of the finished frames. Mere assembly will not render them useful. The frames and temples must undergo substantial adjustment to accommodate the lenses and to properly fit the human face, as well as an elaborate dyeing process. This requires the attention of skilled workers. Domestically purchased hinges, screws, nuts, and trim are used in finishing the eyeglasses

In short, the imported frames and temples become an integral part of a pair of eyeglasses The processes that the imported frames and temples go through after importation result in a substantial transformation. Therefore, the importer of the frames and temples is the ultimate purchaser.

For the 304(a)(3)(H) exception to marking to apply, it must be shown that the ultimate purchaser necessarily knows the origin of the goods. In this case, the importer will purchase and import the plastic eyeglass frame fronts and temples directly from an Italian manufacturer. The ultimate purchaser, therefore, knows the origin of the frames is Italy. Accordingly, the frame fronts and temples fall under the 304(a)(3)(H) exception and need not be marked.

Holding.—The importer is the ultimate purchaser of the plastic eyeglass frame fronts and temples and necessarily knows the origin of the goods due to the circumstances of their importation. Accordingly, the plastic eyeglass frame fronts and temples may be excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(H).

(C.S.D. 80–44)

Marking: Country-of-Origin Marking of Silver-plated Flatware in Prepackaged Sets

Date: July 17, 1979
File: MAR 2–05 R:E:E
710685 EB

This ruling concerns country-of-origin marking requirements for imported silver-plated flatware.

Issue.—May silver-plated flatware to be imported and sold in prepackaged sets be excepted from the country-of-origin marking requirements applicable to the individual flatware pieces?

Facts.—A foreign manufacturer of silver-plated flatware seeks to import his product into the United States. The flatware articles themselves are not marked. The flatware is sold in predetermined sets contained in "presentation packs." These packs are marked to indicate the country of origin of the flatware. The manufacturer asserts that the container marking is sufficient to give to the ultimate purchaser notice of the country of origin of the flatware.

Law and analysis.—Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), generally requires that each article of foreign origin imported into the United States be marked to indicate its country of origin to its ultimate purchaser. Section 134.43(a) of the Customs Regulations further requires that certain items, including silver-plated knives and forks, be permanently marked. Both the requirements have been construed to be subject to the general exception from marking provided in section 134.32(d) for the regulations, which excepts from individual marking articles for which the marking of the containers will reasonably indicate the origin of the articles.

We do not believe, however, that this exception may be applied in the case of silver-plated flatware in presentation packs. It is customary for each article of flatware to be marked. It is reasonable to expect that the purchaser at retail might open the presentation pack to examine the merchandise. Once the packages have been opened, it is conceivable that the container markings might no longer be intact, or that the unmarked flatware pieces from the open packages might be purchased individually.

We believe, therefore, that the standard marking requirements must apply in this case. Silver-plated forks and cutlery will be subject to permanent marking in accordance with section 134.43(a) of the Customs Regulations. Other items must be marked in any sufficiently legible, conspicuous, and permanent manner.

Holding.—It is not reasonable to expect that the country-of-origin markings on presentation packs containing sets of silver-plated flatware will reach the ultimate purchaser intact. Therefore, such flatware is subject to the individual marking requirements of 19 U.S.C. 1304, in the case of most flatware items, and the special requirements of section 134.43(a) of the Customs Regulations, in the case of silver-plated forks and cutlery.

(C.S.D. 80–45)

Special Appraisement: Processed Cloth From the Virgin Islands; General Headnote 3(a), TSUS

Date: July 19, 1979
File: R:CV:V JV
541964

This is in reference to your communication of May 7, 1979, concerning the treatment of laminated cloth imported from the U.S. Virgin Islands, insular possessions outside the Customs territory of the United States.

Before addressing the subject matter of your request, a summarization of the pertinent provisions of general headnote 3(a), Tariff Schedules of the United States (TSUS), and section 7.8(d) of the Customs Regulations governing the treatment of merchandise from insular possessions of the United States is in order.

General headnote 3(a), TSUS, provides as follows:

> [A]rticles imported from insular possessions of the United States * * * are subject to the rates of duty set forth in column numbered 1 of the schedules, except that all such articles * * * manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession * * * which do not contain foreign materials to the value of more than 50 percent (70 percent of their total value with respect to watches and watch movements), coming to the Customs territory of the United States directly from any such possessions, * * * are exempt from duty.

Section 7.8(d) of the Customs Regulations (19 CFR 7.8(d)) provides for the determination of the percentage of foreign materials contained in products from insular possessions:

> (d) In determining whether an article produced or manufactured in any such insular possession contains foreign materials to the value of more than 50 per centum (70 percent in the case of watch movements) a comparison shall be made between the *actual purchase price* of the foreign materials * * * plus the cost of transportation to such insular possession * * * and the final appraised value in the United States determined in accordance with section 402, Tariff Act of 1930, as amended, of the article brought into the United States. [Italic ours.]

You explain that for many years your client has been engaged in the business of importing waterproof and/or laminated cloth into the United States. The cloth in unwaterproofed form has been imported from various European countries into the Virgin Islands where it is further processed. When imported into the Customs territory of the

United States, the finished product has been accorded free entry under the provisions of general headnote 3(a).

In order to minimize its financial risk, the importer is contemplating a new procedure by which instead of purchasing unprocessed cloth in Europe, it, together with another firm as joint venturer, intends importing the material into the Virgin Islands as consignees with ownership remaining with the European supplier, a State-owned enterprise. The joint venturers would then process the cloth either directly or indirectly through various subsidiaries. Because the proposed transactions will involve consignment rather than purchase, no actual purchase price will be available to establish the value of the foreign material; nor will there be sales of such or similar merchandise in suitable quantities by the same supplier at arm's length for importation into the Virgin Islands, or shipments on a consignment basis upon which to determine the existence of comparable values.

In view of the foregoing, you request that a ruling be issued by headquarters instructing the appraising officer that, in the absence of a specific reason to conclude that the stated or declared value of consigned foreign materials entering the Virgin Islands differs from the value of such materials for the purposes of general headnote 3(a), TSUS, to accept the declared value as representing the actual value for appraisement purposes. If, however, the appraising officer should determine that the stated value is insufficient to establish value, you propose several alternative methods of valuation.

The first alternative is that the merchandise being brought into the Virgin Islands be valued at the "option price." This would contemplate that there be a contract between the joint venturers and the supplier pursuant to which the supplier would agree upon a price at which the joint venturers could purchase for their own account any and all of the merchandise which would be the subject of the transaction. Any such price would not be set by the seller at a level below that which it would be willing to accept in an arm's length transaction.

The second alternative would be for the joint venturers to purchase a portion of the material at an "agreed price," accepting the balance on consignment. The portion of the merchandise which the joint venturers would agree to purchase could range between 10 and 25 percent of the total quantity of cloth to be shipped to the Virgin Islands.

As independent evidence that the value of the foreign cloth was a realistic value, the joint venturers would be prepared to offer evidence relating to the importation into the United States of garmets made from similar cloth in the same supplying country or, if necessary, undertake importations into the Virgin Islands of similar cloth from suppliers in other European countries.

For the most part, Customs practice with regard to the valuation of foreign merchandise entered into the Virgin Islands for processing under general headnote 3(a), TSUS, and section 7.8(d) of the Customs Regulations, has been clear insofar as purchased merchandise is concerned. The appraising officer has generally accepted the transaction price as representing the value of the merchandise where it is clear that the transaction involved is an arm's length sale. Customs, in following this practice, has not been bound by the strictures of U.S. appraisement law, as promulgated by 19 U.S.C. 1401a and 1402. Consequently, it has been free to determine value on any reasonable basis. It is your opinion that this same latitude be granted with respect to the valuation of foreign materials entered into the Virgin Islands on consignment for further processing, at least when the values of similar merchandise are not available for comparison.

In *Delaware Watch Co., Inc.* v. *United States*, 64 Cust. Ct. 659, R.D. 11698 (1970), which involved the interpretation of section 301, Tariff Act of 1930, the predecessor to headnote 3(a), as well as 19 CFR 7.8(d), the Government contended that the Customs valuation statutes (19 U.S.C. 1401a and 1402) could properly be used to determine the "value" of the foreign materials contained in certain insular possession watch movements, rather than the "actual purchase price" as provided for by 7.8(d), Customs Regulations. The court stated that *in the absence of a specific congressionally imposed requirement to use the valuation statutes in the manner sought by the Government, it was reasonable to conclude that Congress intended to give the Customs Service reasonable discretion to employ any appropriate method of valuation.* The court concluded that 7.8(d), Customs Regulations, was not inconsistent with Congress intent and that congressional action which later revised parts of the law, affirmed the validity of the regulation by not overruling Customs interpretation of section 301. [Italic ours.]

Although the *Delaware Watch* case affirmed the validity of the regulation involved, it did little to clarify either the meaning of "value" in headnote 3(a) or of "actual purchase price" in 7.8(d), Customs Regulations. Instead, the court indicated that the regulation involved merely "direct[ed] the Customs officials concerning the manner in which the value of foreign materials is to be ascertained." Because the testimony in the case established that the Customs examiner had attempted to calculate the actual purchase prices of the materials involved, the court found those figures to be the "value" of the foreign materials contained in the imported merchandise, and not those calculated pursuant to 19 U.S.C. 1401a or 1402. Accordingly, the courts have validated 7.8(d) of the Customs Regulations; have stated that it mandates Customs to find a value for foreign components contained in importations from the insular possessions based on the "actual

purchase price" of those materials; and have implied that as long as Customs makes an effort (other than by using 19 U.S.C. 1401a or 1402) to calculate the actual purchase price of foreign components, our decision will not be disturbed by the courts.

We would agree that if the appraising officer has no specific reason to believe that the declared values are not representative of the actual purchase price of the consigned foreign materials, he should accept those values in making his appraisement. Likewise, if he determines such values to be deficient or there is no evidence of comparable values he may, consistent with the underlying judical decision, employ any appropriate method of valuation to find value.

We have carefully considered your proposals for alternative methods for constructing a purchase price and find them not to be objectionable so long as their application results in the ascertainment of a reasonable value, that is, a value approximating the actual purchase price of the foreign merchandise. We should point out, however, that regardless of the method of valuation employed by the importer in arriving at the stated value, it is, of course, incumbent upon him to prove to the satisfaction of the appraising officer that a bona fide effort was made to arrive at the best approximation possible.

(C.S.D. 80–46)

Carrier Control: Application of the Coastwise Laws to Foreign-Built Barge Used to Transport Fish

Date: July 20, 1979
File: VES–7–02–R:CD:C
103982 IKT

This ruling concerns the transportation of fish for processing and of packaging materials for consumption between points in U.S. territorial waters.

Issues.—1. Whether pursuant to title 46, United States Code, section 883, a foreign-built barge may lade either unprocessed fish for processing or processed fish at one point in the United States and transport them to another point in the United States where they will be landed.

2. Whether a foreign-built barge which carries fish-packaging materials from Canada may unlade the materials temporarily at a coastwise point, relade them at the same point, and transport them to a second coastwise point without violating section 883.

3. Whether a foreign-built barge may lade fish-packaging materials at one point in the United States and transport them to another point in the United States where they will be landed without violating section 883.

Facts.—The operators of a non-self-propelled, fish-processing barge, built in Canada and registered in the United States, plan to use the barge to process and store fish and seafood products received from U.S. fishing boats at various points in U.S. territorial waters. At the same point at which the barge would receive the fish they would be processed and discharged. A qualified tug would then tow the barge to another processing point. The operators would also like to transport processed or unprocessed fish on the barge from one coastwise point to a second coastwise point where they would be landed.

In addition, the barge would carry packaging materials from Canada to a point in U.S. territorial waters where the fish would be processed. The packaging materials consist of unconstructed boxes, corn sirup glazing liquid, straps, plastic bags, and labels. Some of the unused packaging materials would be landed at that point by qualified lighters and, if necessary, placed in a bonded warehouse or otherwise stored. Other packaging materials would remain on board the barge to be used and landed later as packages containing seafood. The packaging materials temporarily stored would be returned to the barge when the barge had finished processing at that point. You state that the return of the stored materials was always intended. The barge would then move to the next U.S. processing point.

The barge would also receive "other packaging materials" at a U.S. processing point. We assume that "other packaging materials" means materials not transported from abroad by the barge. These materials would not be entirely consumed (which we assume means used as packages containing seafood) or removed at that point. The barge would then transport any remaining materials to another processing point where some would be used and landed as packages containing fish and the unused materials might again be removed for storage.

Law and analysis.—1. Title 46, United States Code, section 883, prohibits a foreign-built vessel from transporting merchandise between points in the United States embraced within the coastwise laws, either directly or via a foreign port for any part of the transportation. Merchandise includes goods, wares, and chattels of every description.

The Customs Service has ruled that to be merchandise within the meaning of section 883, material need not be salable or even of use to anyone else so long as it has some value to the owner of which he would be deprived by forfeiture. Since the seafood, whether processed or unprocessed, has some value to the owner of which he would be deprived by forfeiture, we consider it to be merchandise within the meaning of section 883.

You contend that the movement of seafood products between coastwise points is permissible because the seafood products would not be made available for sale, or as a practical matter, entered into the

stream of commerce until after their arrival at the second coastwise point. However, section 883 prohibits simply the use of a non-coastwise-qualified vessel to lade merchandise at one coastwise point, transport it to another coastwise point, and unlade it at the second coastwise point, regardless of the time the merchandise is made available for sale. Therefore, a barge which lades seafood products at one point in the United States, transports them to another point in the United States, and there unlades the seafood products, will violate section 883.

You state that you believe the packaging material is not "merchandise" within the meaning of section 883 since it is like fuel, dunnage, stores, and other items which are integral to the operation of the vessel and which are consumed. We do not agree that packaging materials actually used as seafood packaging are consumable vessel supplies since they are not for the consumption, sustenance, or medical needs of the crew or passengers. Thus, if the barge relades the packaging materials regardless of how they were stored prior to being reladen, transports the materials between coastwise points, and unlades the packaging materials at a second coastwise point, it will have transported merchandise in violation of section 883.

You argue that even if the packaging materials are considered to be cargo, the materials are in a continuous movement from a foreign point and not in a movement between two U.S. points. For support, you cite *The Bermuda*, 70 U.S. (3 Wall.) 514 (1866):

> A transportation from one point to another remains continuous so long as intent remains unchanged, no matter what stoppages or transshipments intervene. Id. at 553.

This quotation implies that you consider intent relevant to determine whether a coastwise transportation has taken place. However, in *The Bremuda*, the Supreme Court examined intent to determine whether an exportation to a belligerent nation occurred in violation of the rule prohibiting belligerent trade. While intent is an essential element of an exportation, *see Swan & Finch* v. *United States*, 190 U.S. 143, 145 (1903), we do not consider section 883 to require an element of intent to prove the occurrence of a coastwise transportation, *see generally*, *American Maritime Association* v. *Blumenthal*, 590 F. 2d 1156, 1164 (D.C. Cir. 1978), *cert. denied*, 47 U.S.L.W. 3739 (May 14, 1979) (No. 78–1287). In cases involving section 883, the Customs Service has examined intent to determine whether an exportation of merchandise has occurred to break the continuity of a transportation between two coastwise points (see also 19 U.S.C. 1588). However, that issue is not raised by the facts at hand.

Holding.—1. Pursuant to title 46, United States Code, section 883, a foreign-built barge may not lade either unprocessed or processed

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fish at one point in the United States and transport the fish to another point in the United States and unlade them.

2. A foreign-built barge carrying packaging materials from Canada may unlade the materials temporarily at a coastwise point, relade the materials at the same point, and transport them to a second coastwise point, but may not unlade them there without violating section 883.

3. A foreign-built barge may not lade packaging materials at one point in the United States and transport them to another point in the United States and unlade them without violating section 883.

Effect on other rulings.—This ruling follows Customs Service ruling VES–7–02–R:CD:C 103421 CH, dated June 16, 1978, which applies only to the situation where fish-packaging materials were offladen at dockside only for the purpose of entering the packaging materials and thus were not deemed to have been landed within the meaning of section 883.

(C.S.D. 80–47)

Prohibited and Restricted Merchandise: Whether Characters on the Faces of Children's Watches Are Piratical Copies

Date: July 23, 1979
File: CPR 3–01 R:E:E
710747 MC

This ruling concerns the possible restrictions and prohibitions of the 1976 U.S. Copyright Law applicable to the importation of children's watches bearing some resemblance to copyrighted figures.

Issue.—Whether the characters appearing on the face of each of the five sample watches bear substantial similarity to recorded copyright-protected figures so as to constitute piratical copies, within the meaning of section 133.42 of the Customs Regulations, prohibited from importation.

Facts.—650 children's watches were imported into the United States from Hong Kong. This office was requested to determine whether a copyright infringement exists. The watches are currently in general order.

Five different watches were submitted as samples, each featuring a different printed character on its face. The first watch has a picture of a mouse-like person holding a rose in his left hand. Certain features of the character bear some resemblance to "Mickey Mouse," copyrighted by Walt Disney Productions, Inc. The second watch face contains the drawing of a girl with flowing blond hair and star-patterned dress, walking down a flight of stairs. Instead of a second

hand, the watch features a shoe, presumably Cinderella's glass slipper, moving up and down with the beat of each second. The image conveyed is that of the storybook character Cinderella; both Disney and Pioneer Merchandise Co. have copyrighted Cinderella designs.

The third and fourth watches feature a cowboy and cowgirl, respectively, each holding a pistol which moves up and down marking the seconds. Pioneer also has a copyright on a cowboy watch, but no copyright of a cowgirl figure has been recorded with Customs. Printed on the fifth watch is a figure dressed in a cape and carrying a rose. This character has both mouse and pig features but resembles no copyright-protected drawing.

Law and analysis.—Section 602(a) of the 1976 U.S. Copyright Law (17 U.S.C. 602(a)) states: "Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501." Under 17 U.S.C. 603(c), "Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the Customs revenue laws." The prohibited importations, referred to as piratical copies, are defined in section 133.42 of the Customs Regulations as "actual copies or substantial copies of a recorded copyrighted work, produced and imported in contravention of the rights of the copyright owner."

After a comparison of the first submitted watch with the recorded copyright, we are of the opinion that the mouse figure on the face of the sample watch is not substantially similar to the recorded "Mickey Mouse" character. The total effect or the image conveyed by the mouse character on the sample watch would not cause the average lay observer to believe that the mouse figure was appropriated from the "Mickey Mouse" character.

Specifically, the following features differentiate the watch figure from "Mickey Mouse." While "Mickey Mouse" wears gloves, distinctive short pants, and large, light-colored "puffy" shoes, the mouse here in question wears no gloves, his pants are long and flared in a modern style and his shoes are of a normal modern style with heels. Unlike "Mickey Mouse," the watch figure wears a jacket, has neither a tail nor buttons and holds a flower in his hand.

Although the second watch features a Cinderella character, it cannot be considered a piratical copy of the Disney version. The watch figure has a different hair style, color, dress, and background. The Disney version has no stars on her dress and the ticking slipper here was not employed by Disney.

Pioneer Merchandise copyrighted both its own Cinderella watch and a cowboy watch. However, due to the fact that Pioneer no longer produces watches and no Pioneer samples are available for comparison, we will assume that the present samples do not infringe. If Pioneer shall resume production of its copyrighted watches, appropriate action may be taken with regard to future shipments.

No cowgirl figure has been recorded with Customs and the fifth watch figure resembles no copyrighted character.

Holding.—We are satisfied that the mouse and Cinderella characters on the face of the sample watches do not constitute a piratical copying of the recorded "Mickey Mouse" and Disney Cinderella characters within the meaning of section 133.42 and 17 U.S.C. 602 and 603. The other three watches bear no resemblance to any other copyrighted character available for comparison. Accordingly, we are recommending that the watches be released from storage and permitted entry.

(C.S.D. 80–48)

Temporary Importation Under Bond: Drugs Intended Solely for Testing; Failure to Export Under Customs Supervision

Date: July 23, 1979
File: CON–9–09–R:CD:D
210591 JB

Issue.—Whether drugs imported under item 864.30, TSUS, temporary importation under bond for testing purposes, must be tested in the United States. Additionally, whether such goods may be transported abroad, without Customs supervision, for further testing, without violating the conditions of the bond.

Facts.—A producer of medical supplies imported various drugs for testing purposes under item 864.30, TSUS, which permits temporary free entry, under bond, to "Articles intended solely for testing * * *." This merchandise was shipped out of the country to continue the testing in France, but was not exported under Customs supervision as required in section 10.38 of the Customs Regulations (19 CFR 10.38). Regulations promulgated pursuant to the statutory authorization for temporary importation bonds require that goods so admitted be destroyed or exported under Customs supervision within a stipulated time period. Failure to comply results in violation and assessment of liquidated damages (19 CFR 10.38, 10.39).

The importer here advances two major assertions intended to demonstrate why the bond has not been violated. First, that mer-

chandise imported for testing under item 864.30, TSUS, is not restricted to testing solely in the United States. Second, that shipment of the drugs to France "as an integral part" of the testing program did not constitute an "exportation" as contemplated in sections 10.38 and 10.39 of the Customs Regulations (19 CFR 10.38 and 10.39).

The district director of Customs in Philadelphia asserts the contrary of importer's two claims and recommends assessment of liquidated damages. He believes the conditions of the temporary importation bond were violated when the drugs were shipped out of the country without Customs supervision.

Law and analysis.—Importer suggests that it is permissible to ship drugs out of the country without Customs supervision because the testing program continues abroad. This claim is contingent upon a finding that the shipping is not an "exportation" within the meaning of sections 10.38 and 10.39 of the Customs Regulations (19 CFR 10.38 and 10.39). If the shipment does constitute a valid exportation the bond has clearly been breached.

The statute and Customs Regulations offer little guidance on this question. Neither the headnotes to schedule 8, subpart C, TSUS, or the regulations specify where testing under 864.30 must take place. Generally, of course, the provision is designed to permit testing in the United States; if one wanted to continue testing elsewhere normal procedure would be to export under supervision and cancel the bond. Here, however, the importer has already shipped goods out of the country without supervision.

Customs Regulations, section 10.39(d)(1) (19 CFR 10.39(d)(1)) state the following: "If any article entered under schedule 8, part 5C, Tariff Schedules of the United States * * * has not been exported or destroyed in accordance with the regulations * * * the district director shall make a demand in writing under the bond for the payment of liquidated damages. * * *"

An exportation has been defined by the Solicitor General and the courts as "a severance of goods from the mass of things belonging to this country with an intention of uniting them to the mass of things belonging to some foreign country or other." 17 Op. Atty. Gen. 579 (1883) at p. 583; cited with approval *Swann & Finch Co.* v. *U.S.*, 190 U.S. 143 (1903).

When a question arises as to whether or not a valid exportation has occurred the intent of the exporter has been held the determining factor. If the initial bona fide purpose is to remove the goods to another country, with no intention of returning them to the United States an exportation may occur even if intervening factors force a change. Similarly, the mere shipping of goods abroad, with an actual intent to return them, would not constitute an exportation.

It is clear that there was here a bona fide intent to carry goods out of the United States, with no intention of returning them.

There are some indications that exportation also requires an intent to seek a foreign market, to enter the commerce of the country exported to (27 Op. Atty. Gen. 113, (1908); 28 Op Atty. Gen. 173 (1910)). In 1916, the Attorney General denied drawback on cigarettes sent abroad for destruction, noting that the goods were "not exported for use in, or with any intention of having them enter into, the commerce of any foreign country" (31 Op. Atty. Gen. 1 (1916), at p. 2). Here, and in similar cases, the attempt to export was intended to enable the exporter to evade the intent of the statutory grant. The suggestion that goods should be intended for commerce can be distinguished as necessary in some instances to carry out the intent of Congress. With regard to testing materials, the fact that they do not enter into commerce is not similarly relevant. Further, the opinion cited above suggests that "use" of imported goods is sufficient. This requirement distinguishes the present case from examples where goods are destroyed, or merely stored, in an effort to establish an exportation. Although the drugs were, or will be, ultimately destroyed, that result is not the purpose of the exportation. Rather, the use in testing is the purpose.

There appears no compelling reason to adopt the restricted definition of "exportation" that the importer here implicitly urges. Such a definition is not required by law and seems contrary to the policy of maintaining Customs control over goods granted temporary free entry under bond.

Holding.—Drugs imported for testing under item 864.30, TSUS, may not be shipped abroad without Customs supervision as provided in section 10.38 and 10.39 of the Customs Regulations (19 CFR 10.38 and 10.39), without violating the terms of the temporary importation bond.

(C.S.D. 80–49)

Inbond Merchandise Intransit Through the United States: Goods Entered For T. & E. Via a Military Transportation Officer to an Overseas Area Exchange

Date: July 23, 1979
File: BON–1–R:CD:D MR 210707

Issues.—May imported merchandise be shipped inbond to a military transportation officer for export to an overseas area exchange and not be liable for duty?

Facts.—A firm is importing sweaters for export to the Okinawa area exchange. The sweaters will be brought in through the Atlanta foreign trade zone, shipped to the military transportation officer in Oakland, Calif., and then sent to Okinawa.

Law and analysis.—According to 19 U.S.C. 1553:

> Any merchandise, other than explosives and merchandise the importation of which is prohibited, shown by the manifest, bill of lading, shipping receipt, or other document to be destined to a foreign country, may be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duties and exported under such regulations as the Secretary of the Treasury shall prescribe. * * *

The sweaters have been shown to be destined for a foreign country, Japan.

An exportation is usually defined as "a severence of goods from a mass of things belonging to this country with an intention of uniting them with a mass of things belonging to some foreign country" (17 Op. Atty. Gen. 579 (1883)). It is intended that the sweaters will be sold and used in Japanese territory thereby entering the commerce of Japan. This is sufficient in order for there to be an exportation. It should also be pointed out that the shipment of goods to overseas exchanges has been considered an exportation for the purposes of drawback. Thus, the sweaters do qualify under 19 U.S.C. 1553 for transportation and exportation without payment of duty.

The importer and the military transportation officer to whom the goods are transferred must, of course, comply with sections 18.20–18.24 of the Customs Regulations (19 CFR 18.20–18.24) concerning merchandise in transit through the United States to foreign countries in order to satisfy the transportation and exportation bond covering the sweaters.

Holding.—Assuming compliance with sections 18.20–18.24 of the Customs Regulations, goods may be transferred from a foreign trade zone for transportation and exportation via a military transportation officer to an overseas area exchange without appraisement or payment of duty.

(C.S.D. 80–50)

Carrier Control: Customs Treatment of Aircraft as Private or Commercial

Date: July 23, 1979
File: AIR–4–01–R:CD:C
104072 JM

This ruling concerns the treatment of an aircraft as private or commercial for Customs purposes.

Issue.—Is an aircraft, leased to and piloted by the owner of an air charter service, considered to be commercial or private when used to transport representatives and customers of a regular patron of the air charter service on a fishing trip to Canada with the pilot being reimbursed for fuel and his food and lodging.

Facts.—An aircraft, leased to and piloted by the owner of an air charter service, was used to fly the manager of (name of company), (company's) salesman, and three of (company's customers) from the United States to Canada and back. The pilot has stated that the aircraft is leased to his charter service at the rate of $80 per hour of flying time which includes fuel; that (name of company) reimbursed him approximately $35 per hour of flying time for fuel on the trip; and that in appreciation (company's) frequent use of his charter service, he volunteered to provide the aircraft if (name of company) would provide the fuel for the subject fishing trip. In addition, while the pilot has stated that he paid his own expenses for fishing, he presumably is referring to the cost of a fishing license since he told the Customs inspector at Williston, N. Dak., upon return to the United States, that he was being compensated by the passengers for his food and lodging at approximately $20 a day.

Upon departure from the United States, the pilot failed to obtain an outward clearance and file an outward declaration as required for commercial aircraft under sections 6.3 and 6.8, Customs Regulations.

Law and analysis.—Customs has defined "private aircraft" as any civil aircraft engaged in a personal or business flight to or from the United States and not carrying passengers and/or cargo for compensation or hire, nor departing from the United States for purposes of loading passengers and/or cargo for compensation or hire. This definition interprets section 6.3 (a) and (c), Customs Regulations, relating to entry and clearance of aircraft, and is in agreement with the definition of "private aircraft" contained in title 49, United States Code, section 1741. The term "private aircraft" is defined in section 1741 (d)(1) as "any civilian aircraft not being used to transport persons or property for compensation or hire." Guidelines on the application of section 1741(d)(1), and section 6.3, Customs Regulations, state that for Customs purposes, a person transported for compensation or hire on an aircraft is a person who would not be transported unless there were some payment by or for him and who is not connected with the operation of the aircraft or its navigation, ownership, or business.

In this case, the pilot has acknowledged the fact that he was reimbursed for fuel, food, and lodging and that he volunteered to provide the aircraft in appreciation of (company's) frequent use of his charter service. This fact situation is covered by paragraph 1a of the information sheet, "Definition of 'Private' Aircraft for U.S. Customs Pur-

poses," distributed to field offices and the public by the Office of Operations.

Holding.—An aircraft, leased to and piloted by the owner of an air charter service, is a commercial aircraft when used to transport representatives and customers of a regular patron of the air charter service on a fishing trip to Canada with the pilot being reimbursed for fuel and his food and lodging.

Decisions of the United States Court of Customs and Patent Appeals

APPEAL NO. 79–15

ASG INDUSTRIES, INC., PPG INDUSTRIES, INC., LIBBEY-OWENS-FORD COMPANY, AND C E GLASS, APPELLANTS *v.* THE UNITED STATES, APPELLEE, C.A.D. 1237

(Decided February 21, 1980)

Before MARKEY, *Chief Judge*, RICH, BALDWIN, and MILLER, *Associate Judges*, and PENN,* *Judge*.

PER CURIAM.

Upon consideration of appellee's petition for rehearing, the action requested by appellee is denied.

However, in response to appellants' memorandum in opposition, the court's slip opinion under date of November 29, 1979, is modified by adding the following footnote 16.5 on page 18 (symbol indicated after the period in line 4):

[16.5] Section 771(6) of the Tariff Act of 1930, added by the Trade Agreements Act of 1979 and conditionally effective January 1, 1980, lists specific items that are deductible in determining the net subsidy. The list does not include "locational" expenses, and the Senate committee report states:

> The list is narrowly drawn and is all inclusive. For example, offsets under present law which are permitted for indirect taxes paid but not actually rebated, or for increased costs as a result of locating in an underdeveloped area, are not now permitted as offsets. * * *

S. Rept. No. 96–249, 96th Cong., 1st sess. 86, *reprinted in* [August 1979] United States Code Cong. & Ad. News No. 6A, 3, 94. The House committee report underscores that the list is all inclusive. H. Rept. No. 96–317, 96th Cong., 1st sess. 74 (1979).

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*The Honorable John G. Penn, U.S. District Court for the District of Columbia, sitting by designation.

Decisions of the United States Customs Court

Customs Decision

(C.D. 4843)

IDEAL MUSICAL MERCHANDISE CO., A DIVISION OF IDEAL INSTRUMENT CO., INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Horse Tail Hair—Bow Hair

Court No. 75–8–02145

PROCESSING—HORSEHAIR—BOW HAIR

In a contest as to whether imported merchandise is horsehair or bow hair, the extent of the processing the merchandise has undergone is the critical factor. Where the facts adduced at trial clearly demonstrate the merchandise may be used as is, or has been sig-

nificantly processed, as the facts in this case do show, the merchandise must be classified as bow hair. *United States* v. *J. Gerber & Co., Inc., et al.*, 58 CCPA 110, C.A.D. 1013, 436 F. 2d 1390 (1971); *B. Feder* v. *United States*, 58 Cust. Ct. 223, C.D. 2946 (1967).

PROCESSING—HORSEHAIR—BOW HAIR

Where imported horsehair has been double drawn, weighed, bundled, washed, sterilized, fumigated and graded, as appearing in the case here, that importation must be classified as bow hair.

[Judgment for defendant.]

(Decided February 13, 1980)

Freundlich, Schwartz & Weinraub (*Milton J. Freundlich* at the trial; *Jeffrey A. Loeb* with him on the brief) for the plaintiff.

Alice Daniel, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Sidney H. Kuflik* at the trial and on the brief), for the defendant.

LANDIS, Judge: The question presented in this case is whether the imported merchandise invoiced as "double-drawn horse tail hair"[1] should be classified as "Bow hair" under Tarrif Schedules of The United States (TSUS) item 726.20 or as "Other * * *" hair under TSUS item 186.55. There is a significant difference in the tariff rates for if plaintiff's claim is upheld the merchandise is properly entered free of duty.

Plaintiff claims the proper classification is under TSUS item 186.55, to wit:

SCHEDULE 1. – ANIMAL AND VEGETABLE PRODUCTS

* * * * * * *

PART 15. – OTHER ANIMAL AND VEGETABLE PRODUCTS

* * * * * * *

Subpart D. – Feathers, Downs, Bristles and Hair

* * * * * * *

Hair, and fur removed from the skin, not specially provided for, crude, sorted, treated, dyed, or otherwise processed but not made up into articles:

* * * * * * *

Other

186.55	Crude, sorted, treated, or both sorted and treated, but not otherwise processed	Free

Defendant urges that the Customs Service's classification is correct. TSUS item 726.20, under schedule 7, part 3, subpart B, reads "Bow

[1] "Drawn" hair refers to that sorted precisely as to length.

hair." Since the country of exportation is the People's Republic of China, the rates of duty prescribed by the tariff schedules, column 2, apply. General headnote 3(e), "Products of Communist Countries." Thus the ad valorem rate of duty under TSUS item 726.20 is 40 percent.

The issue in this case, simply stated, is whether the imported bulk horsehair has been sufficiently processed to be classified as violin bow hair. On the basis of the testimony adduced at trial, I uphold the defendant's contention and sustain the classification previously made by the Customs Service.

As the decision in this case is dependent on the testimony of the witnesses, the evidence given by the witnesses should be reviewed.

The testimony consisted of two witnesses for the plaintiff and one for the defendant.

Plaintiff's first witness was Mr. Jack Loeb, the president of the plaintiff corporation, Ideal Musical Merchandise Co. He testified he had been in the musical merchandise business since 1945, that he had been involved in all facets of the music industry (r. 8), and that while he has seen horsehair processed into bow hair (r. 13), he had never personally restrung a bow (r. 43). Mr. Loeb described how the horsehair is processed into bow hair, as follows:

> First of all, the hair has to be combed. The short hairs have to be removed from the bundle. It has to be washed, it has to be separated into specific measurements, and it has to be washed in order to prepare it to be used as a violin bow (r. 13).

It is undisputed that the importation in issue is bulk hair, although the plaintiff also introduced coiled hanks of violin bow hair. Mr. Loeb reiterated how the bulk hair is transformed into the hanks:

> As I stated before, this hair, when it comes in this condition, this horse tail hair, has to be separated, the short hairs have to be removed, it has to be combed, washed, and waxed. The ends have to be waxed in order to prepare it. As you notice, the wax tip on the end of the coil of the bow has been—this has been already processed for use on a violin bow, or cello bow, or viola bow, or any bow used for a stringed instrument (r. 17).

Under cross-examination, Mr. Loeb conceded that in some of the catalogs introduced by plaintiff into evidence, bulk horsehair as well as hanks was listed under the category "bow hair" (r. 53, 56). Also on cross-examination, the witness stated that the imported merchandise had not been processed at all (r. 59); yet he admitted that the merchandise was double-drawn, weighed, and bundled for purposes of sale, washed, sterilized, and fumigated (r. 59–60). Mr. Loeb stated he did not know whether the bulk hair had been graded as to color (r. 61). However, in clear contradiction to this, as defendant's

counsel pointed out, in response to interrogatories this witness had previously stated the merchandise had been graded as to color. The interchange proceeded as follows:

> Q. Do you know if it has been graded as to color?
> A. No. All I know is that it has been fumigated in order to comply with U.S. Customs requirements.
> Q. I would like to show you plaintiff's response to interrogatory 5, which defendant propounded to plaintiff. The question in interrogatory 5.(a) says: "Describe fully the processing the subject merchandise underwent from the time it was removed from the horse in order to place it in its condition as imported."
> And you state: "Ans.: Unknown to plaintiff in detail except that it was (1) double drawn, (2) weighed and bundled, (3) sterilized or fumigated, and (4) graded as to color."
> A. Well, it is possible. I don't remember that, but it is possible. I know that this has been weighed and bundled because that is the way it is sold.
> JUDGE LANDIS: When the witness says "this," he is referring to plaintiff's exhibit 2 (r. 61).

Mr. Loeb also testified as to what remained to be done to the importation to transform it into bow hair:

> It has to be processed. It has to undergo additional washing, it has to undergo additional sorting, the short hairs have to be removed, the black hairs have to be removed, it has to be treated, it has to be measured, it has to be tied, and it has to be waxed, and then it becomes bow hair, ready to be used in violin bows (r. 71–72).

Plaintiff's second witness was Mr. John Sipko, an employee of the plaintiff corporation. Mr. Sipko works with all musical string instruments, adjusting and repairing them (r. 88, 89), and has done so for over 40 years (r. 89). He repairs bows for professional musicians (r. 92). Mr. Sipko has rehaired many thousands of bows (r. 101).

To the question of whether the importation could be used immediately in a bow, Mr. Sipko answered: "For better bow I have to select it" (r. 90). Subsequently, he enumerated the other processes the bulk hair would have to undergo to be used as bow hair—combing four or five times, tieing, and then burning the end (r. 90–91), and possibly waxing the end (r. 92–93).

On cross-examination, Mr. Sipko explained that the hanks of hair would have to undergo the same processes as the bulk hair in order to be used as bow hair (r. 97–98). On redirect, the witness appeared to testify that the hanks of hair could be used as bow hair without much further processing—but his testimony was not that clear (r. 99). On recross, he stated that there was "not a big difference" in the processing of hanks and bow hair, but again his testimony was uncertain (r. 101–102).

The most persuasive witness was defendant's, Mr. David Renard. Mr. Renard served as head repairer of old instruments, which included responsibility for rehairing and restringing of bows for 20 to 25 years, at the firm of Luthier Rosenthal & Son (r. 104). He had been stringing bows with bow hair since he was about 9 years old. He estimated that he had rehaired some 6,000 to 8,000 bows (r. 104). Mr. Renard has strung bows for many philharmonic men and persons such as Jascha Heifetz, Mischa Elman, and John Corigliano (r. 104–105). Mr. Renard has imported bow hair similar to the importation at bar (r. 105).

Mr. Renard explained how he would string a bow with the imported merchandise (r. 105–106). Significantly, Mr. Renard testified that he would string the hanks of hair just as he would the bulk hair:

> Well, it would be the same way; without taking them off the large bulk. It is the same thing actually, except it is a smaller quantity. It still has to be done over as far as sorting them out, taking out the short hairs and dark hairs and things (r. 106).

In response to a hypothetical question, whether he would charge a higher price for using the bulk hair or hanks, assuming the same amount of hair was used from each, Mr. Renard responded that there would not be a difference in price (r. 110). He added that as far as time was concerned, one might need more time in stringing a bow from hanks than from the bulk (r. 110). I find the following interchange on direct examination also significant:

> Q. Now, if you or I were to cut hair directly from a horse and give it to you, would you be able to place that on a bow?
> A. No.
> Q. But you could use plaintiff's exhibit 2 to string a bow?
> A. Definitely (r. 110).

The most important query and response went as follows:

> Q. In your opinion, does the subject merchandise need any further processing to be considered bow hair? That is, plaintiff's exhibit 2?
> A. No; it is usable the way it is (r. 111).

Mr. Renard, who was the most credentialed witness, straightforwardly testified that the imported merchandise is bow hair. He stated that the coils of horsehair introduced, which both sides agree is bow hair, would be strung on a bow just as the bulk hair.

On balance, the testimony is heavily weighted in favor of the defendant's position. Of course, as defendant's brief contends, there is a presumption in favor of the Customs Service's classification.

Plaintiff's arguments are unavailing. Plaintiff has argued that the bulk hair is not sufficiently processed to be used as bow hair. Yet defendant's witness, Mr. Renard, specifically testified that the merchandise could be used as is, and plaintiff's witness, Mr. Sipko, seemed

to concede the point. Only witness Loeb, who had never restrung a bow, felt that more processing was mandatory.

Plaintiff also argued that only coiled hanks of horsehair, not bulk hair, are used to restring bows. However, the very catalogs introduced by plaintiff demonstrated that bulk hair, as well as coiled hanks, may be categorized as bow hair. Indeed, defendant's witness testified that he preferred restringing with bulk hair.

Finally, plaintiff relies on *B. Feder* v. *United States*, 58 Cust. Ct. 223, C.D. 2946 (1967). In *Feder*, the proper classification of silver-grey horse tail hair was in issue. The merchandise was classified under paragraph 1541(a) of the Tariff Act of 1930, as modified by the Torquay Protocol to the General Agreement on Tariffs and Trade, T.D. 52739, as "Violin bow hair." Plaintiff urged classification under paragraph 1688 of the 1930 Tariff Act, as "Hair of horse * * * cleaned or uncleaned, drawn or undrawn, but unmanufactured, not specially provided for." The Court sustained the plaintiff's protest. However, the facts are clearly distinguishable from those at bar.

As here, both sides agreed that the importation was horsehair. The issue in *Feder* was "whether, at the time of importation, the horsehair in question had been advanced in condition sufficiently to be considered as violin bow hair as classified or whether the imported horsehair is 'Hair of horse * * * unmanufactured.'" *Feder*, 224. The testimony of record in *Feder* established that the merchandise was covered with kerosene, that approximately 40 percent of the hair consisted of off-color material, dead hair, and hair of improper lengths. In our case, the merchandise was not covered with kerosene, had been double drawn, and only about 5 percent would not be usable as bow hair (r. 111).

> Each case must be decided on the facts of record therein. In the instant case, the merchandise represented by plaintiff's exhibit 1 (the importation) is not violin bow hair in the condition as imported. The imperfections therein are many and include various colors, sizes, dirt, and kerosene. Horsehair in that condition is not usable as violin bow hair without extensive processing [58 Cust. Ct., 226–227].

As I have noted, the weight of the testimony here is precisely the reverse. *See United States* v. *J. Gerber & Co., Inc., et al.*, 58 CCPA 110, C.A.D. 1013, 436 F. 2d 1390 (1971); *B. Feder* v. *United States*, 58 Cust. Ct. 223, C.D. 2946 (1967).

Furthermore, the plaintiff has failed to carry its dual burden of proof. Plaintiff must not only show that the Customs Service's classification is erroneous, but must also demonstrate the correctness of the claimed classification. *United States* v. *New York Merchandise Co., Inc.*, 58 CCPA 53, C.A.D. 1004, 435 F. 2d 1315 (1970). Plaintiff's claimed classification, TSUS item 186.55, is set out supra. The critical lan-

guage is: "Hair * * * Crude, sorted, treated, or both sorted and treated, but not otherwise processed." Even plaintiff's chief witness, Mr. Jack Loeb, testified that the imported merchandise had been otherwise processed before entry (r. 60). Thus, TSUS item 186.55 would be an improper classification according to plaintiff's own witness.

Finally, plaintiff's exhibits 12–A and 12–B for identification are deemed irrelevant. They were admitted only as illustrative exhibits (r. 39, 81–82), and while this action by the court was proper, nevertheless, as defendant states in its brief:

> * * * even if these exhibits had been admitted for other than illustrative purposes they are totally immaterial and irrelevant with respect to the instant action. Whereas the instant merchandise was exported from the People's Republic of China into the United States in 1974, plaintiff's exhibits 12 A and B for identification originated from Japan and were imported into this country in 1978. The classification by the Customs Service of the imported hair is a separate and distinct action from any other entries subsequently imported * * * (defendant's brief, 27).

For all these reasons, I find for the defendant and uphold the classification of the Customs Service.

Judgment for the defendant will enter accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *February 19, 1980*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P80/25	Ford, J. February 11, 1980	International Importers, Inc.	67/62025	Item 684.70 15%	Item 685.22 12.5%	Judgment on the pleadings	Chicago Radio earphones, not headphones
P80/26	Ford, J. February 11, 1980	Nomura (America) Corp.	65/18040	Par. 353 15%	Par. 353 13.75%	Judgment on the pleadings	New York Earphones having an essential electrical featuref

P80/27	Ford, J. February 11, 1980	RCA Corporation	72-12-02543, etc.	Item. 684.70 10% or 9%	Item 685.25 8.5% or 7%	Judgment on the pleadings	Los Angeles-Long Beach Radio earphones, not headphones
P80/28	Ford, J. February 11, 1980	Karl Schroff & Assoc., Inc.	67/31968	Item 684.70 15%	Item 685.22 12.5%	Judgment on the pleadings	San Francisco Radio earphones, not headphones
P80/29	Maletz, J. February 13, 1980	Mim Lador, Inc.	78-10-01859	Item 737.80 22%	Item 725.50 8%	Amico, Inc. v. U.S. (C.A.D. 1214)	New York Music boxes

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/9	Rao, J. February 13, 1980	Imported Rug Associates, Ltd.	R62/11260, etc.	Export value	F.o.b. unit invoice prices plus 20% difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R80/10	Rao, J. February 13, 1980	Imported Rug Associates, Ltd.	R65/5475, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R80/11	Rao, J. February 14, 1980	Manhattan Novelty Corp.	R59/1023, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars

R80/12	Rao, J. Feburary 14, 1980	Selsi Co., Inc.	263158-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars
R80/13	Rao, J. February 14, 1980	Selsi Co., Inc.	289216-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars
R80/14	Rao, J. February 14, 1980	Selsi Co., Inc.	R58/14402, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars
R80/15	Rao, J. February 14, 1980	Selsi Co., Inc.	R58/26525, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars
R80/16	Rao, J. February 14, 1980	Selsi Co., Inc.	R59/5264, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars
R80/17	Rao, J. February 14, 1980	Selsi Co., Inc.	R61/6788, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars

Appeals to U.S. Court of Customs and Patent Appeals

APPEAL 80–16.—Atkins Kroll & Co., Ltd.* *v.* United States.—CARBON STEEL BARS AND BARS-SHAPES—LTFV AND INJURY DETERMINATIONS—DUMPING DUTIES—ANTIDUMPING ACT. Appeal from C.D. 4821, rehearing denied December 5, 1979.

The issue in this case relates to the imposition of any dumping duties on the involved carbon steel bars and bars-shapes under the Antidumping Act of 1921, as amended.

Plaintiff's complaint challenged the Secretary of the Treasury's determination that the merchandise in question was being, or was likely to be, sold at less than fair value (LTFV) and the Tariff Commission's determination that an industry in the United States was being injured by reason of the importation into the United States of the involved merchandise on a number of grounds.

It was the opinion of the Customs Court that plaintiff-appellant, at the trial, abandoned all but one of its contentions directed to the Secretary's LTFV determination, but its brief dealt exclusively with the LTFV issues which plaintiff expressly abandoned at the trial; plaintiff did not explicitly address itself, at the trial or in its brief, to the remaining pleading issues relating to the Commission's injury determination. Accordingly, the court determined that plaintiff would not be permitted to resurrect issues it abandoned at the trial, and its abandonment of the sole issue tendered for trial necessitated dismissal of the action for failure of proof—the regularity of the LTFV and injury determinations being presumed in the absence of evidence to the contrary.

It is claimed that the Customs Court erred in finding and holding that plaintiff's briefs dealt exclusively with LTFV issues which plaintiff had abandoned at trial; in finding and holding that plaintiff abandoned all LTFV issues other than the de minimis issue; in finding and holding that the issues raised in plaintiff's briefs were not properly before the court for determination; in finding and holding that none of the unabandoned allegations in plaintiff's complaint permitted

*Also referred to as Atkins Kroll & Co., Inc., by the parties.

plaintiff to raise the issues in its briefs; in not holding that the court's ruling at trial regarding allegation 11 of plaintiff's complaint was susceptible to interpretation that would permit plaintiff to challenge all issues concerning the Secretary's dumping finding other than those specific points set forth in allegations 20–23 of plaintiff's complaint; in not holding that the complaint should be liberally construed so as to permit plaintiff to challenge the constitutionality of the Tariff Commission's voting procedure; in failing to set aside the court's decision dated September 10, 1979, as reported in C.D. 4821; in failing to resubmit the case to the court for a decision, pursuant to plaintiff's motion of October 10, 1979, for a rehearing or a retrial; in failing to grant plaintiff's alternative relief for a retrial, as requested in plaintiff's motion of October 10, 1979, for a rehearing or a retrial; in failing to address the merits of the arguments set forth in plaintiff's briefs.

APPEAL 80–17.—Border Brokerage Co., Inc. *v.* United States.—STEEL REINFORCING BARS—LTFV AND INJURY DETERMINATIONS—DUMPING DUTIES—ANTIDUMPING ACT. Appeal from C.D. 4825, rehearing denied December 7, 1979.

The issue in this case relates to the imposition of dumping duties on the involved steel reinforcing bars under the Antidumping Act of 1921, as amended.

Plaintiff's complaint challenged the Secretary of the Treasury's determination that the merchandise in question was being, or was likely to be, sold at less than fair value (LTFV) and the Tariff Commission's determination that an industry in the United States was likely to be injured by reason of the importation into the United States of the involved merchandise on certain grounds. At the trial plaintiff stated it intended "to submit these cases wholly on documentary evidence, on a wholly documentary record, using the official records on the investigations by the Secretary of the Treasury and Tariff Commission as supporting evidence for claims that the Secretary and the Commission failed to properly interpret and apply the laws and regulations governing the less than fair value determination and the injury or likelihood of injury determination." In its brief, plaintiff contended that the provision of section 201(a) of the Antidumping Act of 1921, as amended, which allows the Commission to make a finding of likelihood of injury upon a divided vote of the commissioners voting, as in this case, is in violation of parliamentary law, the rules of Congress, the 10th amendment to the Federal Constitution, the due process clauses of the 5th and 14th amendments to the Federal Constitution, fundamental rights, and the concept of ordered liberty.

The Customs Court concluded that the matters discussed in plaintiff's brief were wholly outside of the parameters of the pleadings and, as such, were not properly before the court, and since plaintiff had in effect abandoned its claims as pleaded, the regularity of the challenged administrative determinations are presumed, the court not being persuaded of the existence of evidence in the record to the contrary. The action was dismissed for failure of proof.

It is claimed that the Customs Court erred in finding and holding that the matters raised in plaintiff's briefs were not connected with the allegations in the complaint but were wholly outside the parameters of the pleadings; in finding and holding that none of the unabandoned allegations in plaintiff's complaint permitted plaintiff to raise the issues in its briefs; in finding and holding that the due process arguments in plaintiff's briefs were not addressed to evidentiary matters or to the underlying administrative record; in not finding that plaintiff was not required to specifically plead to the constitutional issues because the statute defining the voting procedure of the Tariff Commission was unconstitutional on its face; in not holding that the complaint should be liberally construed so as to permit plaintiff to challenge the constitutionality of the Tariff Commission's voting procedure; in failing to set aside the court's decision dated October 11, 1979, as reported in C.D. 4825; in failing to resubmit the case to the court for a decision, pursuant to plaintiff's motion of November 13, 1979, for a rehearing or retrial; in failing to grant plaintiff's alternative relief for a retrial, as prayed in plaintiff's motion of November 13, 1979, for a rehearing or retrial; in failing to address the merits of the arguments set forth in plaintiff's briefs.

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, attention: Legal Reference Area, room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Decisions listed in earlier issues of the CUSTOMS BULLETIN, through October 24, 1979, are available in microfiche format at a cost of $15.10 (15 cents per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Reference Area. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: February 25, 1980.

JOHN T. ROTH,
Acting Director,
Office of Regulations and Rulings.

Date of decision	File No.	Issue
1-25-80	104392	Carrier control: Whether certain crusie itineraries of a foreign vessel are violative of the coastwise laws

Date of decision	File no.	Issue
1-25-80	104412	Carrier control: Whether a foreign vessel may land passengers from abroad in Puerto Rico and remain in port for 2 days without violating the coastwise laws
8- 3-79	541968	Valuation: Whether certain inland freight charges incurred in the country of exportation form part of the dutiable value of imported merchandise
9-20-79	552005	Valuation: Use of the Japanese commodity tax in determining the foreign market value of Japanese televisions
2- 6-80	712253	Liquidation: Courtesy notice of liquidation
1-29-80	057884	Classification: Handblown glass miniatures (737.15, 737.95)
11-30-79	060438	Classification: Polyethylene sheeting (389.62, 774.60)
8- 2-79	061156	Valuation: Dutiable status of research and development costs incurred in the manufacture of printed circuit boards
8-13-79	061373	Valuation: Whether an amount paid to a commissionarie by the importer is a bona fide buying commission
9-11-79	061463	Valuation: Whether certain transactions between an importer and related exporter constitute bona fide sales
1- 8-80	061543	Valuation: Whether certain titanium sponge should be appraised under export value utilizing the contract price for the shipment or a higher price in effect at the time of exportation
1-31-80	061802	Classification: Whether a textile label on wearing apparel constitutes ornamentation
1-31-80	062853	Classification: Laminated textile fabrics (355.81, 355.82, 774.55)

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of CERTAIN APPARATUS FOR THE CONTINUOUS PRODUCTION OF COPPER ROD	Investigation No. 337–TA–52

Notice of Publication of Memorandum Regarding Krupp's Request for an Advisory Opinion

On February 14, 1980, the U.S. International Trade Commission published a memorandum regarding the Krupp request for an advisory opinion of December 17, 1979. Public comment had previously been sought regarding Krupp's request. See 45 F.R. 1950 (January 9, 1980). Copies of the memorandum are available at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161.

By order of the Commission.

Issued: February 14, 1980.

KENNETH R. MASON,
Secretary.

Inv. Nos. 701–TA–22 thru 701–TA–51 (Final)

Notice of Institution of Countervailing Duty Investigations and Scheduling of Hearings in Cases in Which Countervailing Duties Have Been Waived or Published After July 26, 1979

AGENCY: U.S. International Trade Commission.

ACTION: Institution of 30 countervailing duty investigations to determine whether with respect to the articles involved an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imported merchandise.

EFFECTIVE DATE: February 5, 1980.

FOR FURTHER INFORMATION CONTACT: The senior supervisory investigator assigned by the Commission to the particular investigation for which the information is sought. The assignments of senior supervisory investigators and their telephone numbers at the Commission are designated below.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, section 104(a), requires the Commission to conduct countervailing duty investigations in cases where the Commission has received the most current net subsidy information pertaining to any countervailing duty order in effect on January 1, 1980, which had been waived pursuant to section 303(d) of the Tariff Act or on certain duties published after July 26, 1979. On February 5, 1980, the Commission received such information. Accordingly, the Commission hereby gives notice that it is instituting the following investigations pursuant to section 705 of the Tariff Act of 1930, as added by title I of the Trade Agreements Act of 1979. These investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207, 44 F.R. 76457) and, particularly, subpart C thereof, effective January 1, 1980.

Written submissions.—Any person may submit to the Commission on or before the prehearing statement due date specified below for the relevant investigation a written statement of information pertinent to the subject matter of the investigation. A signed original and nineteen true copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Hearings.—The Commission has scheduled a hearing in each investigation on the date specified below. All hearings will be held in the Commission's hearing room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, beginning at 10 a.m., e.s.t., on the dates indicated in the attachment. A report

containing preliminary findings of fact prepared by the Commission's professional staff will be made available to all interested persons prior to the hearing. Any person's prehearing statement must be filed on or before the indicated date. All parties that desire to appear at the hearing and make oral presentations must file prehearing statements. For further information consult the Commission's Rules of Practice and Procedure, part 207, subpart C (44 F.R. 76457), effective January 1, 1980.

COUNTERVAILING DUTY INVESTIGATIONS IN CASES IN WHICH COUNTERVAILING DUTIES HAVE BEEN WAIVED OR PUBLISHED AFTER JULY 26, 1979

Invoice No.	Product/country	Prehearing report to parties	Deadline for prehearing statements from parties	Hearing date	Hearing location	Contact person
701-TA-22 (final) [1]	Dextrines and soluble or chemically treated starches derived from potato starch, provided for in TSUS item 493.30/Belgium.	Mar. 21, 1980	Apr. 7, 1980	Apr. 9, 1980	ITC Bldg., Washington, D.C.	John MacHatton, 523-0439.
701-TA-23 (final) [1]	Destrines and soluble or chemically treated starches derived from potato starch, provided for in TSUS item 493.30/Denmark.	do	do	do	do	Do.
701-TA-24 (final) [1]	Dextrines and soluble or chemically treated starches derived from potato starch, provided for in TSUS item 493.30/Federal Republic of Germany.	do	do	do	do	Do.
701-TA-25 (final) [1]	Dextrines and soluble or chemically treated starches derived from potato starch, provided for in TSUS item 493.30/France.	do	do	do	do	Do.
701-TA-26 (final) [1]	Dextrines and soluble or chemically treated starches derived from potato starch, provided for in TSUS item 493.30/Ireland.	do	do	do	do	Do.
701-TA-27 (final) [1]	Dextrines and soluble or chemically treated starches derived from potato starch, provided for in TSUS item 493.30/Italy.	do	do	do	do	Do.
701-TA-28 (final) [1]	Dextrines and soluble or chemically treated starches derived from potato starch, provided for in TSUS item 493.30/Luxembourg.	do	do	do	do	Do.
701-TA-29 (final) [1]	Dextrines and soluble or chemically treated starches derived from potato starch, provided for in TSUS item 493.30/Netherlands.	do	do	do	do	Do.
701-TA-30 (final) [1]	Dextrines and soluble or chemically treated starches derived from potato starch, provided for in TSUS item 493.30/United Kingdom.	do	do	do	do	Do.
701-TA-31 (final)	Hams and pork shoulders, cooked and packed in airtight containers, provided for in TSUS items 107.30 and 107.35/Belgium.	May 13, 1980	May 28, 1980	June 4, 1980	do	Vera Libeau, 523-0368.
701-TA-32 (final)	Hams and pork shoulders, cooked and packed in airtight containers, provided for in TSUS items 107.30 and 107.35/Denmark.	do	do	do	do	Do.

701-TA-33 (final)	Hams and pork shoulders, cooked and packed in airtight containers, provided for in TSUS items 107.30 and 107.35/Federal Republic of Germany.	do	do	do	do	Do.
701-TA-34 (final)	Hams and pork shoulders, cooked and packed in airtight containers, provided for in TSUS items 107.30 and 107.35/France.	do	do	do	do	Do.
701-TA-35 (final)	Hams and pork shoulders, cooked and packed in airtight containers, provided for in TSUS items 107.30 and 107.35/Ireland.	do	do	do	do	Do.
701-TA-36 (final)	Hams and pork shoulders, cooked and packed in airtight containers, provided for in TSUS items 107.30 and 107.35/Italy.	do	do	do	do	Do.
701-TA-37 (final)	Hams and pork shoulders, cooked and packed in airtight containers, provided for in TSUS items 107.30 and 107.35/Luxembourg.	do	do	do	do	Do.
701-TA-38 (final)	Hams and pork shoulders, cooked and packed in airtight containers, provided for in TSUS items 107.30 and 107.35/Netherlands.	do	do	do	do	Do.
701-TA-39 (final)	Hams and pork shoulders, cooked and packed in airtight containers, provided for in TSUS items 107.30 and 107.35/United Kingdom.	do	do	do	do	Do.
701-TA-40 (Final)	Fish, fresh, chilled, or frozen, whether or not whole, but not otherwise prepared or preserved, provided for in TSUS items 110.35, 110.50, and 110.55/Canada.	Apr. 1, 1980	Apr. 16, 1980	Apr. 21, 1980	do	John MacHatton, 523-0439.
701-TA-41 (final)	Handbags of leather, provided for in TSUS items 706.07 and 706.09/Brazil.	Apr. 8, 1980	Apr. 23, 1980	Apr. 28, 1980	do	Bruce Cates, 523-0368.
701-TA-42 (final)	Tomatoes (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved, provided for in TSUS items 141.65 and 141.66/Belgium.	Apr. 17, 1980	May 2, 1980	May 9, 1980	do	Robert Eninger. 523-0312.
701-TA-43 (final)	Tomatoes (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved, provided for in TSUS items 141.65 and 141.66/Denmark.	do	do	do	do	Do.
701-TA-44 (final)	Tomatoes (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved, provided for in TSUS items 141.65 and 141.66/Federal Republic of Germany.	do	do	do	do	Do.
701-TA-45 (final)	Tomatoes (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved, provided for in TSUS items 141.65 and 141.66/France.	do	do	do	do	Do.

COUNTERVAILING DUTY INVESTIGATIONS IN CASES IN WHICH COUNTERVAILING DUTIES HAVE BEEN WAIVED OR PUBLISHED AFTER JULY 26, 1979—Continued

Invoice No.	Product/country	Prehearing report to parties	Deadline for prehearing statements from parties	Hearing date	Hearing location	Contact person
701-TA-46 (final)	Tomatoes (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved, provided for in TSUS items 141.65 and 141.66/Ireland.	do	do	do	do	Do.
701-TA-47 (final)	Tomatoes (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved, provided for in TSUS items 141.65 and 141.66/Italy.	do	do	do	do	Do.
701-TA-48 (final)	Tomatoes (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved, provided for in TSUS items 141.65 and 141.66/Luxembourg.	do	do	do	do	Do.
701-TA-49 (final)	Tomatoes (whether or not reduced in size) packed in salt, in brine, pickled, or otherwise prepared or preserved, provided for in TSUS items 141.65 and 141.66/Netherlands.	do	do	do	do	Do.
701-TA-50 (final)	Tomatoes (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved, provided for in TSUS items 141.65 and 141.66/United Kingdom.	do	do	do	do	Do.
701-TA-51 (final)	Butter cookies provided for in TSUS item 182.20/Denmark	Apr. 24, 1980	May 9, 1980	May 16, 1980	do	Daniel Leahy 523-1369.

[1] This investigation is being consolidated for purposes of the hearing with the investigation involving corn starch from the same country.

By order of the Commission.
Issued: February 14, 1980.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN POULTRY DISK-PICKING MACHINES AND COMPONENTS THEREOF	Investigation No. 337–TA–78

Notice of Investigation

Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 8, 1980, and amended January 21, 1980, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Stork-Gamco, Inc., Airport Parkway SW., P.O. Box 1258, Gainesville, Ga. 30501, alleging that unfair methods of competition and unfair acts exist in the importation into the United States of certain poultry disk-picking machines, or in their sale, because such poultry disk-picking machines are allegedly covered by claims 3, 6, and 8 of U.S. Letters Patent 3,197,809. The complaint alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

Complainant requests that, after a full investigation has been conducted, exclusion of the imports in question and such other and further relief as the Commission deems appropriate be ordered by the Commission.

Having considered the complaint, the Commission, on February 5, 1980, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), an investigation be instituted to determine whether there is a violation of subsection (a) of this section in the unauthorized importation of certain poultry disk-picking machines, and components thereof, into the United States, or in their sale, because of the alleged infringement by such poultry disk-picking machines of claims 3, 6, and 8 of U.S. Letters Patent No. 3,197,809, the effect of tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Stork-Gamco, Inc.
Airport Parkway SW.
P.O. Box 1258
Gainesville, Ga. 30501

(b) The respondents are the following companies alleged to be engaged in the unauthorized importation of certain poultry disk-picking machines or components thereof, into the United States, or in their sale, and are parties upon which the complaint is to be served:

(1) Meyn USA, Inc.
P.O. Box 627
Cornelia, Ga. 30531

(2) Machinefabriek Meyn B.V.
Postbus 16
Nordeinde 68
1510 AA Oostzaan
Holland

(c) David J. Dir, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Chief Administrative Law Judge Donald K, Duvall, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

The phrase "and components thereof" has been added to paragraph (1) above on the basis of the informal investigative activities by the Commission investigative attorney which revealed that the poultry disk-picking machines of the type alleged to infringe claims 3, 6, and 8 of U.S. Letters Patent 3,197,809 have been and can be imported in component parts rather than entirely assembled.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to section 201.16(d) and 210.21 (a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and in the Commission's New York City office, 6 World Trade Center, New York, N.Y. 10048.

By order of the Commission.

Issued: February 15, 1980.

KENNETH R. MASON,
Secretary.

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19 CFR Part 200

Employee Responsibilities and Conduct

AGENCY: U.S. International Trade Commission.

ACTION: Notice of proposed rules.

SUMMARY: This notice proposes procedures for administrative enforcement of the restrictions on postemployment activity established by title V of the Ethics in Government Act of 1978, Public Law 95–521, 92 Stat. 1864 (18 U.S.C. 207) (as amended by Public Law 96–28, 93 Stat. 76 (1979)) with respect to former employees of the U.S. International Trade Commission.

DATE: Comments must be received on or before March 24, 1980.

ADDRESS: Interested persons may submit comments in writing to the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: The Honorable Bill Alberger, Counselor for Employee Responsibilities and Conduct, or Michael B. Jennison, Esq., Acting Deputy Counselor, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0133, or 202–523–0189, respectively.

SUPPLEMENTARY INFORMATION: On October 26, 1978, Congress enacted the Ethics in Government Act of 1978. Title V of the act amended 18 U.S.C. 207, which restricts postemployment conflicts of interest. Congress further amended 18 U.S.C. 207 on June 22, 1979, with passage of Public Law 96–28, 93 Stat. 76. Subsection 207(j) of title V provides for administrative sanctions to be applied by an agency to a former officer or employee found to have violated subsections 207 (a), (b), or (c). Agencies are required, in consultation with the Director of the Office of Government Ethics, to establish procedures to carry out subsection 207(j).

These regulations establish procedures for handling allegations of a violation of subsections (a), (b), or (c), affording the affected former

officer or employee notice and opportunity for a hearing, and applying an administrative sanction if a violation is found.

It is proposed that title 19, part 200, of the Code of Federal Regulations be amended by the addition of a new subpart D, to be composed of sections 200.735–124 through 126, as follows:

CONTENTS

AUTHORITY: Ethics in Government Act of 1978, Public Law 95–521, 92 Stat. 1864 (18 U.S.C. 207) (as amended by Public Law 96–28, 93 Stat. 76 (1979)); 45 F.R. 7402 (1979) (to be codified at 5 C.F.R. part 737).

SUBPART D—PROVISIONS FOR ADMINISTRATIVE ENFORCEMENT OF POSTEMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

Sec. 200.735–124. General.

The procedures in this subpart are established pursuant to subsection 207(j) of title 18, United States Code, for the administrative enforcement of the restrictions on postemployment activities in title V of the Ethics in Government Act of 1978 (18 U.S.C. 207 (a), (b), and (c)) and implementing regulations published by the Office of Government Ethics (5 CFR part 737). Subsections 207 (a), (b), and (c) of title 18, United States Code, prohibit certain forms of representational activity or communications by former Commission employees.

Sec. 200.735–125. Exemption from restrictions.

(a) *Scientific and technological information solicited by the Commission.*—Communications of a former Commission employee solely for the purpose of furnishing scientific or technological information solicited by the Commission in the course of its statutory investigations are exempted from the restrictions on postemployment practices.

(b) *Exemption for persons with special qualifications in a technical discipline.* (1) *Applicability.*—A former Commission employee may be exempted from the restrictions on postemployment practices if the Chairman, in consultation with the Director, office of Government Ethics (the Director), executes a certification published in the Federal Register that the former Commission employee has outstanding qualifications in a scientific, technological, or other technical discipline; that the former Commission employee is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by the former Commission employee's participation.

(2) *Certification authority.*—Certification shall be by the Chairman,

or in the absence thereof, by the acting head of the Commission. Consultation with the Director shall precede any certification. The exemption is effective upon the execution of the certification. The Secretary shall immediately transmit the certification to the Federal Register for publication.

(c) *Testimony and statement under oath or subject to penalty of perjury.* (1) *Applicability.*—A former Commission employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Commission employee. This provision does not, however, allow a former Commission employee, otherwise barred under 18 U.S.C. 207 (a), (b), or (c), to testify on behalf of another as an expert witness except (i) to the extent that the former employee may testify from personal knowledge as to occurrences which are relevant to the issues in the proceeding, including those in which the Commission employee participated, utilizing his or her expertise, or (ii) in any proceeding where it is determined that another expert in the field cannot practically be obtained, that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the former Commission employee's testimony is required in the interest of justice.

(2) *Statements under penalty of perjury.*—A former Commission employee may make any statement required to be made under penalty of perjury, such as those required in registration statements for securities, tax returns, or security clearances. The exception does not, however, permit a former employee to submit pleadings, applications, or other documents in a representational capacity on behalf of another merely because the attorney or other representative must sign the documents under oath or penalty of perjury.

Sec. 200.735–126. Administrative enforcement proceedings.

The following are basic guidelines for administrative enforcement of restrictions on postemployment activities:

(a) *Initiation of administrative disciplinary hearing.*—(1) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information does not appear to be frivolous, the Chairman shall expeditiously provide such information, along with any comments or agency regulations, to the Director and to the Criminal Division, Department of Justice. Any investigation or administrative action will be coordinated with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice informs the Commission that it does not intend to initiate criminal prosecution.

(2) Whenever the Chairman has determined after appropriate review that there is reasonable cause to believe that a former Commission employee has violated 18 U.S.C. 207 (a), (b), or (c) or imple-

menting regulations of the Office of Government Ethics (5 CFR part 737), he or she shall initiate an administrative disciplinary proceeding by providing the former Commission employee with notice as defined in subsection (b).

(3) The Chairman shall take all necessary steps to protect the privacy of former employees prior to a determination of sufficient cause to initiate an administrative disciplinary hearing.

(b) *Notice.*—(1) The Chairman shall provide the former Commission employee with notice of an administrative disciplinary proceeding and an opportunity for a hearing.

(2) Notice to the former Commission employee must include—

(A) A statment of allegations and the basis thereof in detail sufficient to enable the former Commission employee to prepare an adequate defense;

(B) Notification of the right to a hearing;

(C) An explanation of the method by which a hearing may be requested; and

(D) A copy of this subpart.

(c) *Examiner.*—(1) The presiding official at proceedings under this subpart shall be an individual to whom the Chairman has delegated authority to make a recommended determination (hereinafter referred to as examiner).

(2) An examiner shall be an experienced government attorney of high moral character and sound judgment.

(3) An examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceedings may serve as an examiner in those proceedings.

(d) *Scheduling of hearing.*—In setting a hearing date, the examiner shall give due regard to the former Commission employee's need for—

(A) Adequate time to prepare a defense properly, and

(B) An expeditious resolution of allegations that may be damaging to his or her reputation.

(e) *Hearing rights.*—A hearing shall include, at a minimum, the following rights:

(1) To be represented by counsel,

(2) To introduce and examine witnesses and to submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument; and

(5) To obtain a transcript or recording of the proceeding on request.

(f) *Burden of proof.*—In any hearing under this subpart the Commission has the burden of proof and must establish a violation by clear and convincing evidence. The case of the Commission shall be presented by the Office of the General Counsel.

(g) *Recommended determination.*—(1) The examiner shall make a recommended determination exclusively on matters of record in the proceeding and shall set forth therein all findings of fact and conclusions of law relevant to the matters at issue. The recommended determination shall be delivered to the parties.

(2) Within ten (10) days of the date of receipt of the recommended determination either party may submit to the Chairman exceptions to the recommended determination and alternative findings of fact and conclusions of law.

(h) *Final administrative decision.*—(1) Within forty (40) days of the date of the recommended determination, the Chairman shall make a final administrative decision based solely on the record of the proceedings.

(2) In the event that no hearing is requested, the Chairman shall make a final administrative decision within forty (40) days of the date notice is provided to the former employee and the record of the proceedings shall consist of the statement of allegations as defined in subsection (b)(2)(A) and whatever written response the former employee shall provide.

(3) The Chairman shall specify in the final administrative decision the findings of fact and conclusions of law that differ from the recommended determination of the hearing examiner.

(i) *Administrative sanctions.*—The Chairman may take appropriate action in the case of any individual who is found in violation of 18 U.S.C. 207 (a), (b), or (c) or implementing regulations of the Office of Government Ethics (5 CFR part 737) after a final administrative decision by—

(1) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on any matter of business for a period not to exceed five (5) years. This prohibition may be enforced by directing Commission employees to refuse to participate in any such appearance or to accept any such communication;

(2) Taking other appropriate disciplinary action.

(j) *Judicial review.*—Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) or these regulations may seek judicial review of the administrative determination. Review shall be before the appropriate United States district court.

By order of the Commission.

Issued: February 15, 1980.

KENNETH R. MASON,
Secretary.

Proposed Rules on Regulatory Impact

AGENCY: U.S. International Trade Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. International Trade Commission is issuing this notice to obtain public comments on its proposed rules on the regulatory impact of substantive rulemaking. These proposed rules are necessitated by the consideration by the Commission of proposed substantive rules under 19 U.S.C. 1337. These proposed rules on regulatory impact would establish the definition of significant regulations, the criteria and elements of regulatory analysis, the standards for review of existing regulations, and the procedures for public participation in the development of regulations.

DATE: Comments on this proposed rule must be received on or before (30 days after the publication of this notice in the Federal Register).

ADDRESS: Send comments to Jack Simmons, Office of the General Counsel, U.S. International Trade Commission, Washington, D.C. 20436. Copies of all written comments will be available for examination in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C.

FOR FURTHER INFORMATION: Write Jack Simmons at the above address or telephone 202–523–0345.

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

The Commission is a six-member independent agency with broad factfinding powers under the Tariff Act of 1930, the Agricultural Adjustment Act, the Trade Act of 1974, and the Trade Agreements Act of 1979. These statutes authorize the Commission to investigate factors relating to the foreign trade of the United States, with an emphasis on the competitive impact of imported products in the domestic markets of U.S. producers. The character of the Commission's investigative responsibility depends upon the specific statutory mandate. In some cases, the Commission's investigation consists of a purely informational study. In others, the statutes authorize the Commission to make final determinations on import injury to domestic industries.

Due to the primarily investigatory nature of its functions, the Commission has in the past done little rulemaking. Although the Commission does adjudicate cases involving unfair practices in the import trade, this jurisdiction has not yet resulted in significant regulatory activities. Such regulations as have been published relate to the pro-

cedural aspects of participating in the different types of Commission investigations, and have no significant impact on the economy. Consequently, there has been no need for the Commission to establish a formal process for developing regulations; the process has been ad hoc. The Commission, however, is now considering substantive rules which would define certain unfair methods of competition and unfair acts in the importation and sale of steel wire rope.

The Commission's regulations are found in 19 CFR chapter II. These regulations are—

Part 200 Employee responsibilities and conduct.
Part 201 Rules of general application.
Part 202 Investigations of cost of production.
Part 204 Investigations of effects of imports on agricultural programs.
Part 205 Investigations to determine the probable economic effects on the economy of the U.S. of proposed modifications of duties or of any barrier to (or other distortion of) international trade or of taking retaliatory actions to obtain the elimination or unjustifiable or unreasonable foreign acts or policies which restrict U.S. commerce.
Part 206 Investigations for relief from import injury or market disruption to domestic industries.
Part 207 Investigations of whether injury to domestic industries results from imports sold at less than fair value or from subsidized exports to the U.S.
Part 208 (Reserved.)
Part 209 (Reserved.)
Part 210 Investigations of alleged unfair practices in import trade.

II. PROPOSALS FOR RULES ON REGULATORY IMPACT

It is proposed that the following amendment be made to 19 CFR chapter II, subchapter C—Adjudicative Investigations.

A new Part 212 would be added containing subparts A and B as follows:

Subpart A—General provision for rulemaking procedures.
Subpart B—Rules.

SUBPART A—GENERAL PROVISION FOR RULEMAKING PROCEDURES

212.100–1. Purpose.
212.100–2. Scope.
212.100–3. Significant regulations.
212.100–4. Regulatory analysis.
212.100–5. Review of existing regulations.
212.100–6. Public participation in the development of regulations.

AUTHORITY: Sec. 335, Tariff Act of 1930 (19 U.S.C. Section 1335).

212.100–1. Purpose.

This subpart establishes the impact analysis procedures which shall

apply in the development of substantive rules proposed by the Commission.

212.100–2. Scope.

A. Except as provided in this section, this subpart applies to all regulations issued by the U.S. International Trade Commission published in the Federal Register.

B. Unless specifically noted to the contrary, this subpart does not apply to:

1. Regulations issued in accordance with the provisions for adjudications and formal rulemaking in the Administrative Procedure Act (5 U.S.C. 556, 557);

2. Matters related to agency management or personnel;

3. Regulations related to Federal Government procurement;

4. Regulations issued pursuant to statutory or judicial deadlines of less than 91 days or regulations that are issued in response to an emergency;

5. Regulations establishing agency practices or procedures; and

6. Any other matter exempted by the Commission.

C. In cases where the exemptions in pargaraph B of this section apply, regulations will be developed, to the extent practicable, in accordance with the spirit and intent of this subpart.

212.100–3. Significant regulations.

A. The Commission shall identify a regulation to be significant if—

1. The regulation bears an important relationship to Commission policy;

2. A substantial number of individuals, businesses, and public or private organizations would be affected by the regulation; and

3. Compliance with or reporting requirements of the regulations are likely to have a substantial impact on prices or other competitive conditions of the affected merchandise or industry.

B. Before developing new significant regulations, the Commission shall review all issues to be considered; explore alternative approaches; prepare a plan for obtaining public comments; prepare a plan for consultation with other government agencies, if appropriate; and prepare a schedule for the completion of all necessary steps in the development of the regulation.

C. The Commission shall approve all significant regulations before they are published in the Federal Register. Before approving significant regulations, the Commission must determine that—

1. The regulation is necessary;

2. The effects, direct and indirect, have been taken into account;

3. Alternative approaches to the problems and various types of regulations have been considered and the least burdensome of the acceptable alternatives was chosen;

4. Public comments have been considered;

5. The regulation is written clearly and is understandable to those who must comply with it;

6. The cost of the regulation to the Government and to the public has been estimated; and

7. The name, address, and telephone number of a knowledgeable Commission official is included in the publication.

212.100–4. Regulatory analysis.

A. A regulatory analysis shall be required for each proposed significant regulation which could be reasonably expected:

1. To result in increased costs to consumers, business, and Federal, State and local governments exceeding $100 million during any one (1) year of its existence;

2. To result in increased costs to either consumers, businesses, or Federal, State, and local governments exceeding $25 million during any 1 year of its existence;

3. To result in a large increase or decrease in costs or prices for the products(s) and/or service(s) affected by the proposed regulations; or

4. To redirect large amounts of supplies of material, equipment, products, or services from one market to another.

B. The General Counsel or the Director of Operations shall inform the Commission of each proposed regulation which, in his judgment, requires a regulatory analysis.

C. A regulatory analysis shall also be prepared when the Commission determines that such an analysis should be performed.

D. A regulatory analysis shall consist of an examination of alternative approaches in the decisionmaking process and shall include—but not be limited to—the following elements:

1. A succinct statement of the situation;

2. A description of the major alternative methods of dealing with the situation which were considered; and

3. An analysis of the probable economic consequences of each of the major alternatives with an explanation of the reasons for choosing one alternative over the others.

E. The notice of proposed rulemaking for each regulation for which a regulatory analysis is required shall include—

1. An explanation of the regulatory approach that has been selected or favored by the Commission;

2. A summary describing the other alternatives which have been considered;

3. The major reason(s) for selecting or favoring a particular alternative.

F. The Commission shall consider public comments on each regulatory anaylsis and have a final regulatory analysis prepared to be

made available when the final regulations are published. Significant public comments shall be summarized and responded to in the final regulation.

212.100–5. Review of existing regulations.

A. The Commission shall review all existing regulations administered by the Commission at least once every 4 years.

B. The following criteria, among others, shall be considered in the review of existing regulations:

1. The continued need for the regulation;
2. The availability of alternative approaches to the regulation;
3. Any complaints or suggestions received in connection with the regulation;
4. Any burden imposed on those affected by the regulation;
5. The cost to the Government of the administration of the regulation;
6. The desirability of revising the language of the regulation to simplify or clarify it; and
7. The desirability of eliminating duplicative regulations.

212.100–6. Public participation in the development of regulations.

A. The Commission shall consider a variety of ways to provide the public with an early opportunity to participate in the development of the Commission's regulations. Among the methods to be considered are—

1. Publishing an advance notice of proposed rulemaking;
2. Holding public hearings or open conferences;
3. Mailing notices of proposed regulations to publications likely to be read by persons who might be affected by the regulations; and
4. Providing for more than one cycle of public comments.

B. When none of the methods listed in paragraph A of this section is used in a particular rulemaking covered by this subpart, the accompanying final regulation shall explain the reasons and indicate what other steps were taken to assure an adequate opportunity for public participation.

C. The public shall be given at least 60 days to comment on all proposed significant regulations. Exceptions to this policy shall be granted only by the Commission and only when the Commission determines that it is not possible to comply. When an exception is made the regulation shall be accompanied by a brief statement of the reasons for the shorter time period.

By order of the Commission.

Issued: February 20, 1980.

KENNETH R. MASON,
Secretary.

(603–TA–5)

Calcium Pantothenate From Japan

Notice of Preliminary Investigation

Notice is hereby given that on February 12, 1980, the U.S. International Trade Commission voted to institute a preliminary investigation under section 603 of the Trade Act of 1974 (19 U.S.C. 2482) to investigate whether imports of calcium pantothenate from Japan are the subject of:

(a) a combination, contract or conspiracy to restrain trade and commerce in the United States; or

(b) a scheme to monopolize the d-calcium pantothenate and/or dl-calcium pantothenate submarkets in the United States.

Specifically, among other issues, the Commission staff has been directed to investigate the following questions raised by the amended complaint filed on October 24, 1979, by Syntex Agribusiness, Inc.:

(1) The identities of any and all participants in the d-calcium pantothenate and dl-calcium pantothenate markets in the United States and their respective market shares;

(2) The relationship among certain Japanese manufacturers or importers of calcium pantothenate;

(3) Any attempts by certain Japanese manufacturers or importers to absorb the amount of any antidumping duties imposed on these imported products;

(4) Prices charged by the certain Japanese manufacturers to U.S. importers and prices charged by U.S. importers to U.S. consumers for for calcium pantothenate;

(5) Cost of production for calcium pantothenate manufactured in Japan.

The Commission staff has been directed to submit a report on the above matters to the Commission no later than August 11, 1980.

By order of the Commission.

Issued: February 20, 1980.

Kenneth R. Mason,
Secretary.

U.S. Customs Service

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Customs Court

CB SERIA300SDISSDUE094R 1
SERIALS PROCESSING DEPT
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300 N ZEEB RD
ANN ARBOR MI 48106